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COMPARING MAJOR TRADE BILLS

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 490, S. 636, and H.R. 3

APRIL 7 AND 8, 1987

(Part 2 of 2)

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COMPARING MAJOR TRADE BILLS

TUESDAY, APRIL 7, 1987

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Moynihan, Baucus, Bradley, Riegle, Rockefeller, Daschle, Packwood, Danforth, Chafee, and Heinz.

[The press release announcing the hearing, and the prepared statement of Senator Heinz follow:]

Press Release #H-34

PRESS RELEASE

FOR IMMEDIATE RELEASE
March 20, 1987

UNITED STATES SENATE
COMMITTEE ON FINANCE
SD-205 Dirksen Senate Office
Building
Washington, D.C. 20510

FINANCE COMMITTEE ANNOUNCES HEARINGS COMPARING MAJOR TRADE BILLS

Washington, D.C. - Senator Lloyd Bentsen (D., Texas), Chairman of the Senate Finance Committee, announced Friday a series of three hearings to compare pending major trade bills. The bills to be discussed would be HR. 3, the Trade and International Economic Policy Reform Act of 1987, S. 490, the Omnibus Trade Act of 1987, and Title II of S. 636, the International Economic Environment Improvement Act of 1987.

"A consensus has developed that the country needs a trade bill in 1987," Bentsen said. "This new trade bill will necessarily be more complex than trade bills of the past, and many groups have taken positions on a wide variety of provisions. While we have had a number of hearings over the last two years on specific ideas for new trade policies and changes in U.S. trade laws, we would be remiss if we did not provide an opportunity for omnibus comments on the major pending bills."

The first hearing in this series will be held at 10:00 a.m. on Thursday, April 2, 1987, in Room SD-215 of the Dirksen Senate Office Building. The only witness will be Ambassador Clayton Yeutter, the U.S. Trade Representative. No other witnesses will be scheduled on this day.

Subsequently, further hearings will be held on this subject beginning at 10:00 a.m. on Tuesday, April 7th and Wednesday, April 8, 1987, in Room SD-215 of the Dirksen Senate Office Building. Witnesses who wish to appear at these hearings may request an opportunity to testify.

SENATOR JOHN HEINZ
COMMITTEE ON FINANCE
HEARING ON MAJOR TRADE LEGISLATION
APRIL 7, 1987

OPENING STATEMENT

Today's hearing features an interesting collection of witnesses -- probably the first time they have ever appeared together on the same panel. Needless to say, I suspect we will encounter some disagreement as we go along on the merits of the trade bills soon to be before the Committee.

I hope our witnesses will discuss those merits -- or their lack -- in some detail. As the markup approaches it is time we heard from affected parties directly as to how specific provisions will impact on them.

At the same time, however, I hope our witnesses will take a few moments of their time to address the larger question of what is really going on in our economy that warrants trade legislation. Rudy Oswald knows, because he no doubt hears every day from workers who have lost their jobs to imports. Frank Fenton knows too, since his own industry, steel, has been on the front line for ten years.

Our consumer witness and the representative from the Federal Trade Commission may not have had the same experiences, but we welcome their point of view anyway. I hope, however, that they will resist the opportunity to argue that all trade actions are bad because they cost someone money. First of all, I could fill the witness table with studies and reports predicting huge consumer costs of import relief which have turned out to be wrong, notably the studies on the President's steel program in 1984.

Second, even if there are costs -- and there often are -- we ought to be weighing those costs, not just counting them. We ought to be measuring them against projected benefits -- to the economy at large and not just directly affect workers. That is what making trade policy is all about, and what I hope this hearing will be about.

OPENING STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM TEXAS

The CHAIRMAN. This hearing will come to order.

Today we are holding our second day of hearings comparing the major trade bills that are before the Congress. We heard from Ambassador Yeutter last Thursday, and now we will hear from some private-sector witnesses and some additional public witnesses.

In acting on trade legislation this year, it is important that we keep in mind the responsibility that the nation has to lead this world's economic system. The world economy is barely growing. While Japan and Europe have greater responsibilities than ever to contribute to world trade growth, neither of them seems ready to lead the global economy. Only this country can do it.

At the same time, our Nation is suffering through a traumatic economic crisis. It is time for America to make a comeback. We must begin the effort to improve our competitiveness this year, as Senator Baucus and Senator Chafee have so often pointed out. And we can't lead that world from a sickbed.

Therefore, this trade bill must continue American global economic leadership, while trying to get America itself to recover. It may be the most difficult trade bill to formulate in modern American history.

Under our Constitution, Congress and the executive branch share the responsibility for this two-prong attack. If the President cannot get Congress to put trade agreements into effect that he negotiates, then he cannot lead the world.

We have, for the example, the time when Lyndon Johnson negotiated a world trade agreement, and then found that Congress was not in accord and would not put it into effect. What the world needs to know is that Congress and the President have had a meeting of minds as to the objectives of what we are trying to achieve for our country. If we reach that kind of an agreement, a consensus, then I think we have strengthened the hand of the President of the United States and the Trade Ambassador as they go out to negotiate.

And that is what we are seeking in this particular piece of legislation.

I am delighted to see my distinguished colleague, Senator Moynihan, who is here with his Congressman, and I assume seeking the privilege of introducing him. I recognize Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, thank you. And it is just that—a privilege to bring before our committee Representative Boehlert of the 25th District of New York. He is, indeed, my Congressman. He is the former county executive of the great manufacturing city of Utica. He is here to reflect some of the trade concerns which have made themselves felt in that district.

I commend him to you as a man of great integrity, and understanding and concern for his constituency. He has my vote, and I hope some day to have his. [Laughter.]

The CHAIRMAN. That is laying it on the line. And Congressman, if you want to reply to that, I am sure the Senator would be pleased.

STATEMENT OF HON. SHERWOOD BOEHLERT, U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK, ACCOMPANIED BY TERRENCE P. STEWART, COUNSEL

Congressman BOEHLERT. Thank you very much, Mr. Chairman. And I thank my distinguished Senior Senator, who has always had my vote—that is the spirit of bipartisanship.

I have a detailed statement, Mr. Chairman, that I have submitted for the record, if you will permit me to summarize.

The CHAIRMAN. It will be accepted in full.

Congressman BOEHLERT. Mr. Chairman and members of the committee, I want to thank you for the opportunity to appear before you today to discuss one aspect of our trade problem which symbolizes all the rest. The problem is circumvention of orders intended to stop dumping.

But I am not here merely to complain about the problem. I am here to present you with a bipartisan agreement which can end this circumvention. It is a simple idea and I have had a positive reaction to it. Colleagues of mine from across the Nation have signed on as supporters.

The dumping problem has hit people in my district especially hard. Just 3 years ago, some people were writing the obituary for Smith-Corona, a company in my district which is the last American manufacturer of portable electric typewriters. Less than half of the current work force was on the job, but the company was determined to survive. We were able to secure foreign trade zone status for Smith-Corona, and the company has made an impressive comeback from under 1,000 employees 3 years ago, to nearly 2,200 today.

Unfortunately, the problem Smith-Corona faced in 1984 still threatens to drag them down—dumping by the Japanese. SCM spent 8 years and over $1 million to win an antidumping order against imported typewriters. As a result, every imported typewriter now faces a tariffs of up to $40.

But despite this hard-won victory, the dumping goes on. The law's loose language allows dumping to continue while thousands of workers in my district and around the country suffer as a consequence.

With the Yen at an all-time high against the dollar, how can the Japanese sell their product so cheaply? Is it lower Japanese overhead or labor cost? No. The development of some cost saving high tech process? No. The answer is simpler and more frustrating. The Japanese companies can add a simple $2 computer chip into the typewriter, creating a relatively useless calculator function. The function may not even be advertised, because the consuming public doesn't demand it. But this, in effect, creates a new product and bumps it into another tariff classification—avoiding the intended $40 tariff.

This $2 computer chip in typewriters costs the U.S. Treasury more than $40 million a year—money the Treasury can use, particularly now. American jobs and industries end up being exported abroad.

The legislation I am offering, H.R. 1678, will allow the Government to disregard minor changes in existing or new products when determining their import classification. Senator D'Amato has offered an identical bill, S. 893, and members from the Majority have endorsed the idea as well.

The concerns I am raising are not merely parochial. SCM's situation is a road map for more circumvention on other products from other countries. Virtually any product that can be technologically enhanced is threatened. Products like machine tools, specialty steel, and large consumer items like TV's or stereos have been dodged in similar ways.

Let me be clear, Mr. Chairman. I am, essentially, a free trader. Everyone knows the benefits of free trade. Trade wars are not in anyone's best interest. The legislation I am offering simply guarantees that existing antidumping law isn't leap-frogged by rapid technological advances.

As you begin to write the omnibus trade legislation, I hope you will find that the legislation I have offered would be a sensible, valuable part of your omnibus trade package.

Thank you, Mr. Chairman.

The CHAIRMAN. Congressman, that is very interesting testimony. I, frankly, did not know of that specific circumvention of the law. But, if they can do it that easily in one instance, apparently they could in others. I, for one, will be very interested in taking a look at it in some depth.

I defer now to Senator Packwood.

Senator PACKWOOD. Congressman, just one or two questions, because I am stunned by this. Had Commerce made a dumping decision involving portable typewriters?

Congressman BOEHLERT. That is correct. And incidentally, Senator, I would like to introduce with me Terrence Stewart, who is counsel.

Senator PACKWOOD. Thank you. Now the Japanese make a slight change: they put in a chip that will perform some minimal function, which is unrelated to the typewriter and nobody cares about it anyway.

Congressman BOEHLERT. Exactly.

Senator PACKWOOD. And the Commerce Department says that is a different product.

Congressman ROEHLERT. Exactly.

Senator PACKWOOD. Obviously, you have followed this up. How and why did Commerce come to that conclusion, and how did they justify it?

Congressman BOEHLERT. Well, for the life of me, I can't quite understand it myself and I am having some difficulty, because of the potential impact of this very modest change holds. Incidentally, I have brought two machines before me. The one on my left, to your right, is manufactured by the Smith-Corona people in Cortland, NY. The one to my right, your left, is manufactured by Panasonic people in Japan. They have added a simple $2 calculating function—a chip, thereby avoiding the $40 tariff and doing great damage to one American company employing people in beautiful upstate New York—my neighbors and Senator Moynihan's constituents.

I have spoken with the Department of Commerce on the merits of our case, and quite frankly, I think they are sympathetic.

Senator PACKWOOD. Did they give you anything in writing that I could look at to see what the rationale is?

Congressman BOEHLERT. I don't have anything with me, Senator, but I can provide that information for you.

Senator PACKWOOD. I have no more questions, but I would like to know how they justify it. If you could get me something, I would appreciate it.

Congressman BOEHLERT. All right, fine. I would be glad to.

Senator PACKWOOD. Thank you.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. I have exactly the same response, Mr. Chairman. At the very least, tariff classification ought not to be dispositive in a situation of this kind. I sit down at that schoolhouse in Penders Corners and pound away on an old SCM. I don't think I could afford one of the new ones, but it still works.

I think your situation is a specific example of our continuing concerns, and I'm sure the chairman agrees. We abide by certain standards, then we look up and we can't see them, they are somehow avoided and the avoidance seems to require very much less ingenuity than it ought. If we could get the details, we certainly would consider the bill that you are crafting.

I thank you very much.

Congressman BOEHLERT. If I may defer for a moment to Mr. Stewart, I think he could better respond to that, Mr. Chairman.

The CHAIRMAN. Would you identify Mr. Stewart, please.

Congressman BOEHLERT. Mr. Terrence Stewart. He is a counselor in Washington, DC, working with me and the Smith-Corona Co.

The CHAIRMAN. All right.

Mr. STEWART. Mr. Chairman, the answer is a simple one. At the time that the dumping investigation was filed back in 1979; all portable electric typewriters came in under a single number. Since 1979, microchip technology has decreased in cost. Many of the electromechanical parts have been replaced by computer chips. And the tariff schedules, which are used in identifying merchandise that is subject to an order, simply were no longer reflective of the importations coming in.

This machine, on your left, my right, Panasonic machine, has a handle. It clearly is a portable machine, due to an electronic chip which gives it some calculating functions, it is put into a different tariff classification than portable electric typewriters have been in since the 1930's or 1960's. It is simply a matter of interpretation and allowing the agency to adopt a view that the law does not permit them to interpret orders expansively to avoid, if you will, eliminating the problem in a remedial statute.

The CHAIRMAN. Are there any further questions?

Senator MOYNIHAN. No, but thank you.

The CHAIRMAN. That is helpful. Thank you very much.

Congressman BOEHLERT. Thank you, Mr. Chairman.

The CHAIRMAN. The next set of witnesses will be a panel consisting of Mr. Rudy Oswald, who is the Director of Economic Research Department for the AFL-CIO; Mr. Frank Fenton, who is the cochairman of the Trade Reform Action Coalition; Mr. Lewis Leibowitz, who is with the National Foreign Trade Council; Mr. A.W. Jessup, member of the board of directors, Consumers for

World Trade; and Mr. Daniel Oliver, who is the Chairman of the Federal Trade Commission.

I would like, Mr. Oliver, if you will lead off, please. Gentlemen, because of the number of witnesses and the constraints of time, you will be limited in time for your presentation. I assume staff has already addressed that point. Thank you.

[The prepared statement of Hon. Sherwood Boehlert follows:]

Before the Senate Finance Committee

Testimony of the Honorable Sherwood L. Boehlert

Congressman, 25th District, New York

April 7, 1987

Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to appear before you today to discuss one aspect of our trade problems that symbolizes all the rest. The problem is circumvention of orders intended to stop dumping. Despite years of litigation by U.S. companies to fight unfair dumping practices, the law's loose language allows dumping to continue -- thousands of workers in my district and yours suffer the consequences. I have offered legislation in the House, H.R. 1678, a copy of which I submit for the record today. This bill is designed to close the dumping loopholes, and I am gratified that it has received a warm bipartisan response by members of the House Ways and Means Committee. Senators D'Amato and Hollings have introduced similar legislation and I am here to encourage you to adopt the sensible remedy we have offered. Here are the details.

I. A Need to Eliminate Circumvention

(a) Overview.

The statutory modification has to do with eliminating possible loopholes in the current administration of the law that foreign producers have used to escape the reach of antidumping duty and countervailing duty orders.

The administration has recognized the serious problem facing many U.S. industries that have brought unfair trade cases only to find the relief intended by Congress eliminated through one maneuver or another while the unfair trade practice remains unchecked. Indeed, the administration, in the explanation of its proposed trade legislation, stated:

> Under the present law, parties subject to an antidumping finding or order or a countervailing duty order often have been able to circumvent or evade the order by making slight changes in their method of production or shipment of merchandise destined for consumption in the United States.

House Doc. No. 33, 100th Cong., 1st Sess. 459 (1987).

As this Committee is aware, the House Ways and Means Committee has amended H.R. 3 to include the administration's proposal to eliminate circumvention. I strongly agree with the administration and with the Ways and Means Committee that circumvention of outstanding antidumping and countervailing duty orders must not to be permitted.

The Congress has repeatedly attempted to close off avenues used by foreign producers to ignore the requirements of U.S. law to compete fairly. In the Trade Act of 1974, Congress spelled out that lowering home market prices below cost could not be used as a vehicle to avoid the reach of the antidumping law, and included provisions dealing with state-controlled economy countries and with multinational producers. Similarly, in 1979, Congress required the payment of cash deposits upon importation to permit an earlier correction of the conditions of unfair trade in which U.S. companies are forced to compete.

I have introduced in the House (H.R. 1678), and am pleased to see that Senators Hollings (S. 891, § 102) and D'Amato (S. 893) have introduced legislation in the Senate, that would enhance the effectiveness of the administration's proposal by specifically identifying when later developed products are to be viewed as included within an outstanding antidumping duty order. These bills supplement the excellent work already commenced by the administration in its proposed language. Many products evolve over time in terms of production technology or in terms of the sales features that are included. Automobiles, machine tools, steel, glass, consumer products (televisions, typewriters, radios, refrigerators), electronic components, bicycle speedometers, bearings, agricultural and chemical products are just a few examples of products where later developed production processes, varieties or features are not uncommon.

Automobiles, while not presently covered by any antidumping or countervailing duty order, provide a classic and easily understood example of the potential problem. Power windows, power brakes, tape decks, electronic ignition, antiskid braking systems are just some of the "features" that have developed over time. To say that an antidumping or countervailing duty order covering automobiles does not cover a new model from a particular country because electronic ignition or tape decks were not available at the time of the original finding is to make a mockery of the remedial purpose of the law. Similarly, the fact that many cars today are front-wheel drive or have a significant proportion of the weight in non-steel materials or are built in assembly facilities using robots doesn't mean that the resulting automobile would not be covered by an outstanding order.

So too, with the advent of microchips, many products in 1987 have features or controls that did not exist just a few years ago. Certainly, this is true in the area of typewriters. Inexpensive computer chips make possible the addition of buffer memory to permit the editing of text before it is actually typed on the typing paper, of "dictionaries" to check the correctness of an individual's typing, autocentering and many other features. Yet, such new features, which cost very little to add, can't be a justification to permit circumvention of an existing antidumping duty order on typewriters.

Unfortunately, the Commerce Department has on a number of occasions perceived itself unable to handle such later developed products under outstanding orders. The amendment I have proposed would prevent foreign producers from so easily avoiding the antidumping or countervailing duty orders in place -- orders which are the Congressional guarantee that domestic producers will confront only fair trade in the marketplace.

(b) Why circumvent an order?

The importance of escaping the reach of an outstanding order is easy to understand and is reflected in the continuing high import statistics: being outside of the reach of an order provides large foreign producers the opportunity to dump with impunity into the U.S. market to preserve market share in periods of strong foreign currencies (e.g., Japan, West Germany at the present time) or to capture market share. Such actions by foreign producers, of course, reduce the trade balance movements that the correction of the overvaluation of the dollar was supposed to permit.

Let's look at just a couple of examples drawn from public sources. The dramatic increase in the value of the yen has been widely publicized. Based on Federal Reserve Board statistics, the Yen/U.S.$ relationship has followed the following path since 1985:

1985 1st Qtr.	Y257.53/$1
1985 2nd Qtr.	Y250.80/$1
1985 3rd Qtr.	Y238.38/$1
1985 4th Qtr.	Y207.18/$1
1986 1st Qtr.	Y187.81/$1
1986 2nd Qtr.	Y169.89/$1
1986 3rd Qtr.	Y155.85/$1
1986 4th Qtr.	Y160.46/$1
1987 Jan-Feb.	Y154.12/$1

Thus, the Yen has appreciated 67.1% vis-a-vis the dollar between the first quarter of 1985 (1 Yen = $0.003883) and the first two months of 1987 (1 Yen = $0.006488)(conversely the Yen/$ ratio has declined by 40.2%). Similar increases in the value of currencies have occurred for many of our other trading partners. With the further drop in the value of the dollar to Y146/$1 in recent days, this trend is merely continuing.

While the increased value of the Yen (and other currencies) reduces certain costs in Japan and elsewhere, prices from Japan and our other trading partners should have risen dramatically since the beginning of 1985. Such has not been the case in many instances, in large measure because of the desire of many foreign producers to maintain marketshare in the United States. Indeed, the foreign press has repeatedly reviewed the significant losses or reduced profitability being incurred by foreign producers who export significant quantities of product to the United States. See, e.g., The Japan Economic Journal, Week ending December 6, 1986 at 1, 21 ("Mfg. firms expect 32% profit fall"); Far Eastern Economic Review, December 25, 1986 at 66 (article on Japan's Bridgestone Corp., a tire producer, indicating price increases in 1986 were limited to 7% in the replacement market as it attempted to maintain its competitiveness in the market); The Japan Economic Journal, February 7, 1987 at 24 ("High yen pushes Sanyo into firm's first operating loss").

Thus, U.S. import prices of basic commodities like steel which should have exhibited sharp price increases actually show lower prices from Japan for products such as steel plate ($480 vs. $444), sheet and strip steel ($487 vs. $478), steel bars and light shapes ($416 vs. $405), steel pipe and tube ($555 vs. $539) during 1986 than were true for 1985. Source: U.S.I.T.C. Monthly Report on the Status of the Steel Industry, Publication Number 1942, January, 1987 (data for first 11 months only).

Elimination of the possibility of circumvention not only provides the relief to individual industries that are entitled to relief under the law, but also helps assure that the curative effects of the devaluation of the dollar are reflected in changed trade flows.

(c) The problem in portable electric typewriters.

As the Committee may be aware, my Congressional district includes Cortland, New York. Cortland is home to Smith Corona's U.S. production facilities. Smith-Corona Corporation is the last remaining U.S. producer of portable electric typewriters, employing more than 2,000 workers, a number significantly lower than levels in the mid-1970's, but encouragingly above the darkest days of 1982. The company's efforts to obtain effective relief from dumped imports from Japan, and the effect elimination of the circumvention problem can have on the families in the Cortland area, have convinced me that the time for statutory change is now.

Since the early 1970's, Smith-Corona has attempted to eliminate the dumping perceived to be prevalent in the U.S. marketplace. Margins of dumping exceeding 40% were found in the investigatory stages for individual companies exporting from Japan, and margins as high 16.4% were found in the last completed administrative review. The hope that these findings should provide relief to a domestic industry and its workers, however, has been shattered by the events in the last few years.

Japanese producers have been able to obtain a series of Customs rulings which indicate that products developed after the initial investigation, which contain some memory or the ability to perform calculating functions, were properly classified under a Tariff Schedule number different than that for portable electric typewriters. The cost of adding the capability of performing calculations on a typewriter can be as little as $0. Adding memory typically runs no more than a few dollars. Yet, for most of these new typewriters, Commerce did not suspend liquidation and recently found that they are not covered by the existing antidumping duty order.

The result of such decisions by the agency has been predictable: virtually every portable typewriter being imported into the United States in 1987 contains one or more of the features (memory, calculating capability) that permit the imports to avoid the reach of the antidumping duty order. The domestic industry is left with an order that has little, if any, meaning. Yet, Smith Corona's product line continues to compete directly with the machines being imported. The same channels of distribution are being used by all producers. The products are being used by the same end users and are sold at price points at or below traditional price points for portable typewriters. The potential for continued harm to the domestic industry that is entitled to fair trade conditions is obvious.

Despite the dramatic increase in the value of the Yen, prices for portable typewriters imported from Japan into the United States have remained virtually unchanged. Were the products being imported viewed as covered by the dumping order, there is little doubt that massive dumping margins would be found in an administrative review. Instead of corrective pricing action being taken, foreign producers and their U.S. agents have been reported to laugh at their ability to avoid the reach of the order.

While import statistics cover a variety of models, the overall price movement nonetheless tells the story of what is happening in the marketplace: 1985, quantity of machines under 676.0540 = 327,552, f.a.s. value $71.9 million (avg. value, $219.56); 1986, quantity = 419,571 machines, f.a.s. value $71.2 million (avg. value, $169.66). Thus, while the Yen was appreciating 41.7% (1986 average vs. 1985 average), the average value of U.S. imports in dollar terms was declining 22.7% and in Yen terms by 45.4% (average prices should have been $311.01/unit in 1986). This type of pricing action can only occur through the failure of an outstanding antidumping duty order to reach the later developed products that constitute virtually all PETs sold in the United States today.

(d) Statutory proposal.

My bill will correct the harm to domestic industries that flows from the current ability of foreign producers to circumvent the law through the introduction of later developed products. It adds to the administration's proposal a subsection which requires a determination of the scope of an outstanding order to be based upon the following common sense considerations:

(1) Does the new product compete with currently- produced products of the domestic industry on whose behalf the order was entered?

(2) Is the new product sold through the same channels of distribution and at roughly comparable price points as the currently-produced domestic products?

Such considerations assure that new products that impact the domestic industry intended to be protected under the outstanding order are, in fact, covered.

The fact that the new imported product is under a different Tariff Schedule number or has additional features or performs additional functions would be irrelevant. A new product would not be covered by an outstanding order only if the additional function or functions constitute the primary use of the product, and the cost of such functions constitute a major part of the total cost.

Domestic industries shouldn't be required to expend time and energy constantly justifying why each new feature, function or production process doesn't render the new product outside the reach of an existing order. The law is, as the Committee has previously noted, a remedial one. My proposal will help guarantee that the remedial purpose is achieved, that the hard work it takes a domestic industry to establish its entitlement to relief is not negated through gamesmanship, that the U.S. Treasury is not cheated out of revenues owed to the government -- nearly $40 million per year in antidumping duties on portable electric typewriters alone -- and, most importantly, that American men and women are not deprived of the jobs and compensation that conditions of fair trade would permit them to maintain.

For too long our workers have paid the price of living in the world's easiest dumping land. Too many of our industries have been cut back, pushed off shore or eliminated. We will never know which of those industries or how many of our workers and communities could have been saved by trade policies based on simple common sense. Your efforts here are an enormous step towards a comprehensive solution, and I hope you will find that H.R. 1678 would be a valuable and sensible part of that solution.

Thank you.

STATEMENT OF DANIEL OLIVER, CHAIRMAN, FEDERAL TRADE COMMISSION, WASHINGTON, DC

Mr. OLIVER. Mr. Chairman, I am Daniel Oliver, Chairman of the Federal Trade Commission. My testimony today will cover U.S. competitiveness in general, and my concerns about some specific provisions of the Omnibus Trade Act of 1987.

In 1913 President Wilson said "It is of serious interest to the country that the people at large should have no lobby and be voiceless in these matters, while great bodies of astute men seek to create artificial opinion, and to overcome the interests of the public for their private profit." The FTC was established to be an advocate for the consumer against those special interests, and I am here today in that role.

I am afraid the astute men that President Wilson spoke about are now trying to convince the American public that America faces a competitiveness problem which is causing a trade deficit. It has been argued that this nation's trade deficit is a threat to our national welfare, that the deficit is evidence that the United States is not competitive, and that import restraints are needed to restore competitiveness. None of these statements is true.

A trade deficit—or a surplus for that matter—is not bad in and of itself. Mexico runs a surplus, but does anybody here want to trade Mexico's economy for ours?

Some would have us believe that the trade deficit problem is a jobs issue. But while we have been having this so-called problem, our economy has added over 10 million jobs, between 1980 and 1986. Nor is the existence of a trade deficit evidence that American manufacturing is losing its competitiveness or its jobs. Productivity growth in manufacturing has exceeded that in any other sector of the economy.

Manufacturing output is at an all time peak. Employment and real wages in manufacturing are stable or increasing. In fact, recent changes in the exchange rate should make U.S. goods more attractive to foreign buyers in the future.

I do not wish to downplay the challenges and hardships associated with a free competitive economy. However, American manufacturing is alive and well, and is likely to remain so.

There are several proposals being considered by Congress that purport to enhance competitiveness. To the extent these bills would open foreign markets to U.S. goods, I support them. However, many of the proposals would restrict competition. I am not aware of any instance where consumers, or the economy as a whole, have benefited by protecting an industry from competition. Instead, there are substantial costs associated with the restricting competition. Prof. Gary Hufbauer of Georgetown University estimates that trade barriers already cost the American consumer more than $50 billion a year. And experience tells us you can't make a firm more competitive by sheltering it from competition.

Federal Trade Commission economists have studied restraints in a number of industries. They show trade restraints in particular industries cost consumers hundreds of thousands of dollars per job purportedly saved. And a recent Brookings Institution study estimates that the restraints on imports of Japanese cars may have even reduced, not increased, employment in the auto industry.

Protectionist rules reduces competition within the United States by effectively outlawing competitive foreign products, leading to increased prices and reduced consumer choice. The last time the Congress had this level of furor about protectionism, it enacted the Smoot-Hawley Tariff Act.

Time does not permit me to comment on the provisions of each trade bill, however, I will note one group of provisions that would seriously undermine the FTC's power to protect consumers and competition. As discussed in my written statement, I feel some of the provisions of the Omnibus Trade Act of 1987 could spur collusion among competitors in the United States, and lead to increased prices for consumers.

In particular, parts that amend sections 203 and 205 of the Trade Act of 1974 appear disquieting, like the thoroughly discredited trade codes in the New Deal's National Recovery Act of the 1930's. In sum, Congress should work toward removing import restraints here and abroad, instead of making it easier for special interests to get more protection.

The Gramm-Kemp bill is one example of how trade legislation can make America more competitive and benefit consumers at the same time. Consistent with this bill, I suggest your highest priority should be removing trade barriers—both here and abroad. I urge you not to repeat the mistakes of Smoot-Hawley.

Thank you, Mr. Chairman. I would be pleased to answer any questions that you or members of the committee may have.

The CHAIRMAN. Thank you.

The next witness, Mr. Jessup.

[The prepared statement of Mr. Daniel Oliver follows:]

STATEMENT OF
DANIEL OLIVER
CHAIRMAN OF THE FEDERAL TRADE COMMISSION

Thank you, Mr. Chairman. My testimony today concerns the issue of U.S. competitiveness in general, and two specific provisions of the Omnibus Trade Act of 1987.

In 1913 President Wilson said "It is of serious interest to the country that the people at large should have no lobby and be voiceless in these matters, while great bodies of astute men seek to create artificial opinion, and to overcome the interests of the public for their private profit." The FTC was established to be the advocate for the consumer against those special interests who would enrich themselves at the public's expense. The Commission's role as representative of the American consumer in international trade matters is highlighted by Section 6(h) of the Federal Trade Commission Act. This section empowers the Commission "to investigate ... trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress" on these conditions or practices.

The FTC with the Department of Justice also shares responsibility for enforcing the antitrust laws of the United States. Any change in our nation's regulation of international trade should preserve to the greatest extent possible our traditional faith, expressed in the antitrust statutes, that free and open competition is the best defense of the economic well-being of the American consumer. [1] The general nature of protectionist legislation, and some specific provisions in some proposed bills, are likely to undercut this defense.

GENERAL CONCERNS ABOUT TRADE LEGISLATION AND THE TRADE DEFICIT

The astute men and special interests that President Wilson spoke of are now trying to convince the American public that America faces a competitiveness problem that is causing a trade deficit. It has been argued that (1) this nation's trade deficit is a threat to our national welfare, (2) the deficit is evidence that the U.S. has a problem of competitiveness, and (3) import restraints are needed to restore that competitiveness. None of these statements is true. The remedies for these nonexistent problems would benefit special interest groups while making American industry less competitive and imposing significant costs on consumers.

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[1] As Justice Black wrote in Northern Pacific Railway v. United States, our antitrust laws are a

> comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.

326 U.S. 1 (1958).

A trade deficit -- or a surplus for that matter -- as any number o economists will tell you, [2] is not something that is good or bad in and of itself. Mexico runs a trade surplus; does anyone want to trade their economy for ours?

A nation's trade deficit is the counterpart to its capital account surplus. During the 1970's the U.S. had a trade surplus. We ran a deficit in our capital account because American banks were lending out large amounts of money to Latin American nations. In order to make these loans, it was necessary for the United States to run a trade surplus.

We are now running a surplus in our capital account because the favorable climate for investment in the United States has caused an influx of foreign capital, while lending by American banks to Latin America has been sharply curtailed. For the rest of the world to invest on net in the United States, it is necessary for the United States to run a trade deficit. Our trade deficit is therefore a reflection of our economic strength, rather than evidence of weakness. In fact, total number of jobs in the U.S. has grown ten times more than the combined growth of six of our major industrial trading partners combined.[3] Thus, the deficit is not costing U.S. jobs in the aggregate.

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[2] See Herbert Stein (former chairman of the Council of Economic Advisers and senior fellow at the American Enterprise Institute), "Leave the Trade Deficit Alone," WSJ, March 11, 1987; Milton Friedman (Nobel Laureate in Economics) and Rose Friedman, **Free to Choose**; Editorial, "Trade Deficit Bogeyman," WSJ, September 13, 1985; Alan Reynolds, "'Mainstream Economics': None Dare Call It Voodoo," WSJ, [1984].

[3] Ambassador Clayton Yuetter, "Trade Legislation: Effects on America's Competitiveness", The Heritage Lectures, No. 93, March 13, 1987, p.1-12.

Nor is a trade deficit evidence that American manufacturing is losing competitiveness or jobs. Manufacturing output is at an all time peak, and over the past decade has remained a relatively stable percentage of real Gross National Product. Employment and real wages in manufacturing have been stable or increasing. Productivity growth in manufacturing has exceeded that in all other sectors of the economy, and is far ahead of historical levels.

Manufacturing productivity grew at an annual rate of 3.8% between the third quarter of 1981 and the third quarter of 1986, versus a growth rate of only 1.5% per year from 1973 to 1981, and above the average annual growth rate of 2.6% between the end of 1948 and 1986.[4] In fact, the recent change in exchange rates should make U.S. goods more attractive to foreign buyers in the future. I do not wish to down play the challenges and hardships associated with a free competitive economy. Nor do I wish to downplay the importance of foreign markets being open to U.S. goods. However, American manufacturing is alive and well, and is likely to remain so.

Enhancing the ability of American firms to compete in the world marketplace is nevertheless a desirable goal. The best way to achieve that goal is to allow the free market to work. The partial deregulation of energy and transportation have strengthened the ability of American firms to compete. There are many more areas where deregulation will make American industry more competitive, and several are identified in the Administration's trade bill.

There are many proposals being considered by Congress that purport to enhance competitiveness. Most of these policies, if enacted, would restrict competition, both from foreign producers and among domestic ones. You cannot make a firm more competitive by sheltering it from competition.

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[4] Economic Report of the President, 1987, p. 46.

Moreover, I defy any other witness these hearings to show me an example in which consumers or the economy as a whole benefitted by protecting an industry from competition, whether foreign or domestic. Economists have shown again and again that there are substantial costs from restricting competition. For example, Gary Hufbauer of Georgetown University estimates that trade barriers already cost the American consumer more than $50 billion a year.[5] The cost to the consumer of these restraints far exceeds the benefits that the special interests who fought for them receive.

Federal Trade Commission economists have studied actual and potential trade restraints in a number of industries. The results of their studies are illustrated in the table attached to this statement. In each case the results are the same: the restraint is, on balance, harmful to the economy. Furthermore, they are a very inefficient means of protection. For example, in 1984 our economists estimate that the so called "voluntary" import restraints on automobiles cost American consumers $241,000 for each job protected. The total cost to consumers is $1.1 billion a year.[6] A more recent study by the Brookings Institution estimates that the Voluntary

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[5] Gary C. Hufbauer and Howard F. Rosen, Trade Policy for Troubled Industries, Institute for International Economics, March 1986.

[6] David G. Tarr and Morris E. Morkre, "Aggregated Costs to the United States of Tariffs and Quotas on Imports: General Tariff Cuts and Removal of Quotas on Automobiles, Steel, Sugar, and Textiles," Bureau of Economics, Federal Trade Commission, December 1984.

Restraints Agreement may have even reduced, not increased, employment in the auto industry.[7]

A study by the New York Federal Reserve Bank shows that American consumers not only pay too much as it is for protectionism, but these costs fall hardest on the poorest of consumers. The Bank estimates that import restraints on clothing, sugar, and autos alone cost people with incomes between $7,000 and $9,000 the equivalent of a 66% increase in their income tax. For people with incomes of $58,000 and over, protection of these industries is equal to a 5 percent income tax increase.[8]

Despite the significant cost of protectionism, the Congress is now considering a wide range of protectionist legislative proposals affecting international trade. Many of these are protectionist and would impose billions of dollars of costs on consumers. To a large degree, this is because any trade bill may reduce competition within the U.S. by eliminating competitive foreign products from the marketplace. This directly leads to increased prices and reduced choice for American consumers. In addition, some proposals increase the likelihood of further price hikes because they exempt domestics firms from various aspects of the antitrust laws. The last time Congress had this degree of concern over protectionism, it enacted the Smoot-Hawley Tariff Act. That legislation helped plunge the world into the worst depression of the century.

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[7] Clifford Winston and Associates, Blind Intersection?, (Brookings Institute, 1987), pp. 61-67.

[8] Federal Reserve Bank of New York, "The Consumer Cost of U.S. Trade Restraints," Quarterly Review, Summer 1985, p.1-12.

SPECIFIC PROVISIONS OF THE OMNIBUS TRADE ACT OF 1987

Space does not permit me to comment on the provisions of each trade bill at this time. However, I would like to address one group of provisions that would seriously undermine the FTC's statutory powers to protect consumers and competition through sound antitrust enforcement. Specifically, I fear that the provisions of the Omnibus Trade Act of 1987 (S.490) that would amend Sections 203 and 205 of the Trade Act of 1974 might enable American companies to engage in anticompetitive behavior in the domestic market.

The proposed Section 203 would, in effect, make the escape clause into an intra-industry collusion statute. Upon commencement of an ITC escape clause investigation, the U.S. Trade Representative would establish a group consisting of representatives of firms and workers in the industry and government to agree to an "industry adjustment plan." The bill authorizes the group, including competing firms, to discuss a wide range of issues relating to competition, including investment levels, capacity utilization, innovations in management and production, and marketing strategies. The group could consider not only the effects of imports, but all actions that industry or government could take to combat any adverse impact on the domestic industry.

Moreover, group participants would be given immunity from the antitrust laws, although price fixing and horizontal restraints of trade would remain unlawful.

These provisions encourage competing domestic firms to agree to reduce output and raise prices through forms of tacit collusion, whose existence would be difficult to detect or prove. The government would provide not only a sanctioned forum for reaching an agreement and a degree of antitrust immunity, but a system for policing adherence to the agreement by the colluding firms. Government monitoring of the confidential commitments to implement the adjustment plan would provide an enforcement mechanism for the firms involved to prevent cheating on any anticompetitive agreement.

It is amazing how much proposed Section 203 is like many of the long discredited portions of the New Deal. Under the proposed Section 203, the line between "industry adjustment" and "industry collusion" will inevitably prove difficult, if not impossible, to draw. At best, it will provide an invitation for protracted litigation over industry agreements that may or may not be lawful. In any event, the drive for increased American competitiveness could be significantly impeded.

History provides clear -- and disquieting -- examples of such government-fostered anticompetitive industry coordination. The experiment of forming industry councils to develop trade codes was at the heart of the National Recovery Act ("NRA") in the early 1930's. Figures as diverse as Arthur Schlesinger and Thurmond Arnold agree that the NRA was a failure. Even before the Supreme Court struck down that statute on constitutional grounds, the NRA had an anticompetitive impact. Many of the codes promulgated under the NRA contained blatantly anticompetitive provisions mandating minimum price fixing, exchange of price statistics, standardization of costs and sales practices, production quotas, and limitations on plant capacity. In some industries the collusion outlived the statute, giving rise to many antitrust cases during the late 1930's and 1940's.

The proposed Section 205 also has troubling anticompetitive potential. It provides a new remedy option, in addition to import restrictions or adjustment assistance. If the ITC finds that rising imports have seriously injured an industry, or seriously threaten such injury, and the President issues a directive, then the Attorney General could be required to grant domestic firms an exemption from Section 7 of the Clayton Act and the Sherman Act (insofar as it applies to mergers and acquisitions).

There is no need for such a provision if the goal is to permit procompetitive mergers that benefit competition and consumers. The courts and the antitrust enforcement agencies recognize the importance of foreign competition in evaluating the likely consequences of a merger.

Furthermore, because the courts and antitrust enforcement agencies make their determinations only after careful evaluation of the case-specific evidence, the agencies are able to prevent anticompetitive mergers that may be exempted under the proposed Section 205. The review proposed by Section 205 is not comparable either in thoroughness nor in its criteria to that employed by the antitrust agencies under the 1984 Department of Justice Merger Guidelines. Essentially, the proposed Section 205 requires the Attorney General, in consultation with the Secretary of Commerce, to grant an antitrust exemption upon determination that a merger "is reasonably related to enhancing competition with foreign competitors to whom market share has been lost, and, considering worldwide competition, outweighs any adverse competitive impact on the domestic market." This provision has the potential for placing consumer interests and the fundamental goals of antitrust policy behind the interest of firms seeking protection from competition.

I believe that American competitiveness can be increased and the interests of American consumers advanced only through more, not less, competition. Firms that have failed to provide American consumers with the goods or services they need or prefer should not be granted government protection -- whether from imports or otherwise. Moreover, even where serious injury to domestic firms is attributable to activities in foreign markets, remedies should not allow or encourage anticompetitive behavior by American firms in domestic markets. Unfortunately, the proposed revisions to Sections 203 and 205 appear to do just that.

I therefore urge the deletion from the Omnibus Trade Act of 1987 of Section 203, and those provisions of Section 205 that provide for exemption from the antitrust laws.

CONCLUSION

In general, trade restrictions hurt consumers without providing significant benefits. The costs per job saved run into the hundreds of thousands of dollars -- if, indeed, any jobs are saved at all. Limiting competition from abroad while permitting domestic producers to collude reduces, not enhances, competitiveness. Congress should instead work towards removing import restraints, not make it easier for the special interests to get more of them. The Gramm-Kemp bill, which seeks to expand trade through negotiation, is one example of how trade legislation can make America more competitive and benefit consumers at the same time. Consistent with this bill, I suggest your highest priority should be to remove trade restraints -- both here and abroad. I urge you not to repeat the mistake of Smoot-Hawley.

Thank you.

FTC Cost of Protection Studies: A Summary of the Results
(Annual Costs in 1983 Dollars)***

Topic	Total Consumer Loss (in millions of dollars)	Consumer Loss Per Job (in dollars)	Total Loss to the Economy (in millions of dollars)	Economic Loss Per Job (in dollars)	Present Policy	Source
All Tariffs Worldwide	$6,340**	—	$6,340	—	Tariffs are presently in effect	Morkre and Tarr (1984)
Steel (VRA)	1,097.9	114,000	780	81,000	VRAs are presently in effect	Tarr and Morkre (1984)
Autos (VRA with Japan)	1,109.2	241,000	993.8	216,000	VRAs removed in 1985	Tarr and Morkre (1984)
Sugar						
1. Quotas	251.6****	—	251.6	—	Quotas are presently in effect	Tarr and Morkre (1984)
2. Tariffs	741	52,600	69.4	4,900	Tariffs are still in effect	Morkre and Tarr (1980)
Tuna (additional tariffs)	179	240,000	10	13,000	Proposal to impose additional tariffs was rejected	Gallick (1984)
Copper (Quotas)	420	—	48	—	Proposal to impose quotas was rejected	Hash (1984)
Textiles						
1. Tariffs on Clothing	2,302	19,800	667	5,700	Presently in effect	Tarr and Morkre (1980)
2. Quotas on Clothing from Hong Kong	384	43,000	372	42,000	Quotas are presently in effect	Tarr and Morkre (1984)
CB Radios (additional tariffs)	80.2	137,000	20.1	34,000	Additional tariffs lapsed in 1981	Morkre and Tarr (1980)

Table (continued)

Topic	Total Consumer Loss (in millions of dollars)	Consumer Loss Per Job (in dollars)	Total Loss to the Economy (in millions of dollars)	Economic Loss Per Job (in dollars)	Present Policy	Source
Nonrubber						
1. Tariffs	285.1*	27,800	19.4	1,900	Tariffs are still in effect	Morkre and Tarr (1980)
2. Quotas on Korea and Taiwan	188.4**	34,000	188.4	34,000	Quotas lapsed in 1981	Morkre and Tarr (1980)
3. Proposed Quotas on All Nonrubber Footwear	531	13,900	131	3,500	Proposal to impose quotas was rejected	FTC (1985)

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* Consumer losses were not calculated but can be obtained from information in the report.

** Consumer losses are the same as economic losses.

*** Results not in 1983 prices were converted using the Consumer Price Index.

**** These are net costs to consumers after assumed changes in tax outlays for sugar price support programs.

FTC Cost of Protection Studies: A Summary of the Results
Cost-Benefit Ratios

Topic	Consumer Loss-Benefit to the Economy Ratio (over 4 years)	Economy Loss-Benefit to the Economy Ratio (over 4 years)	Present Policy	Source
Steel (VRA)	34.60[a]	24.57[a]	VRAs are presently in effect	Tarr and Morkre (1984)
Autos (VRA with Japan)	23.90[a]	21.41[a]	VRAs removed in 1985	Tarr and Morkre (1984)
Sugar (Tariffs)	36.62[b]	3.43[b]	Tariffs are still in effect	Morkre and Tarr (1980)
Textiles				
1. Tariffs on Clothing	---	7.2[b]	Presently in effect	Morkre and Tarr (1980)
2. Quotas on Clothing from Hong Kong	18.93[b]	18.33[b]	Quotas are presently in effect	Tarr and Morkre (1984)
CB Radios (additional tariffs)	100+[a]	100+[a]	Additional tariffs lapsed in 1981	Morkre and Tarr (1980)
Nonrubber Footwear				
1. Tariffs	44.55[a]	2.96[a]	Tariffs are still in effect	Morkre and Tarr (1980)
2. Quotas on Korea and Taiwan	68.09[a]	68.09[a]	Quotas lapsed in 1981	Morkre and Tarr (1980)

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[a] Costs per dollar of earnings losses saved.

[b] Costs per dollar of unemployment costs saved.

STATEMENT OF A.W. JESSUP, MEMBER, BOARD OF DIRECTORS, CONSUMERS FOR WORLD TRADE, WASHINGTON, DC

Mr. JESSUP. I am Alpheus W. Jessup, a Director of the Consumers for World Trade. Consumers for World Trade is a national nonprofit organization, established in 1978, concerned with the interest of consumers in international trade policy.

We fear that a significant threat to consumers could result if some of the proposals in Senate 490 and H.R. 3 were adopted by the Congress.

The CHAIRMAN. Mr. Jessup, if you would speak more directly into the mike, pull it a little closer. We would all like to hear what you have to say.

Mr. JESSUP. I will make some general comments and a few specific recommendations. Protection can be costly. When trade restrictions are imposed, consumers face inflated domestic, foreign, and retail prices. Low cost items become unaffordable or unavailable. Trade restrictions act as a hidden tax, or a regressive tax on American consumers. Low, fixed-income individuals and unemployed workers bear the heaviest economic burden. Trade restrictions now in place represent a 23-percent surcharge on people earning less than $10,000 yearly. The overall cost has already been mentioned, something in the order of $55 to $65 billion a year.

CWT opposes proposals in S. 490 and H.R. 3 to transfer or weaken the decisionmaking authority of the President. According to present law, the President must take into account broad factors such as the effectiveness of the relief, competition, international interests, and consumer interest. The President, the only elected official with a national constituency, is the proper person to fulfill that responsibility.

CWT opposes the call for automatic relief or retaliation. This would weaken the President's discretionary right to dispose of cases in a manner which he deems most favorable for the nation as a whole.

Automatic retaliation may not take into account the widespread consequences of trade restrictive actions.

In terms of employment, it is true that protection may save some jobs, but only in the short-term—it does not guarantee job security and it does not come free. It can be extravagantly costly to the national economy. In the auto sector, for example, it costs $160,000 to protect a $23,300 a year job; in steel, $110,000 for a $27,000 job; and in textiles, $42,000 for a $14,000 job.

Generally, CWT supports some form of temporary assistance to workers displaced because of imports. Emphasis should be on retraining and relocating the worker, not on a direct subsidy to the industry.

CWT strongly supports flexible negotiating authority for the new round of international trade talks. Although general guidelines are useful, it would be self-defeating to tie the hands of our GATT negotiators with specific pre-conditions that could impede their ability to deal with the agenda items that are favorable to U.S. interests.

The impact on consumers and on the national economy of escape clause and unfair trade practice cases has, over the years, been considered only in the last stages of decision making. By then, the American public has been saturated with graphic stories of the distressed industry and its workers, and little attention is given to the effect of a proposed remedy on the Nation as a whole and on consumers. Consumers often have limited opportunity to testify before the International Trade Commission.

To correct this imbalance, CWT suggests that you consider two amendments. CWT proposes a Trade Act amendment which would require that the International Trade Commission prepare and publish an analysis of the economic impact of the duty or import restriction under consideration. This analysis should include the broad issues which the President is mandated to consider: the cost to consumers; the effect on prices, pre-tax revenues, and jobs in the ailing industry; the effect on output, employment and profits in related industries; in the case of quotas, the effect on the current account balance and on the GNP.

Such a recommendation was approved by the House Ways and Means Committee last year.

Second, in the same context, CWT respectfully suggests that the Congress, as well, study and make public the various costs of a major trade action before action is taken. Additional details on these proposals are provided in the full text of our testimony.

These proposals are not intended to block grants of import relief—these are needed to assure that decisions on relief measures are taken in the light of a comprehensive evaluation of the likely economic aftermath, and to enhance public awareness and suoport of effective trade legislation.

We are hopeful that the 100th Congress will opt for the adoption of thoughtful trade policies that will promote healthy economic growth.

The CHAIRMAN. Thank you.

Mr. Leibowitz of the National Foreign Trade Council.

[The prepared statement of Mr. A.W. Jessup follows:]

TESTIMONY ON COMPARING MAJOR TRADE BILLS
BEFORE THE SUBCOMMITTEE ON TRADE
SENATE FINANCE COMMITTEE

I am Alpheus W. Jessup, a Director of Consumers for World Trade. Consumers for World trade (CWT) is a national, non-profit organization, established in 1978, concerned with the interest of consumers in international trade policy. We believe a significant threat to consumers would result if some of the proposals contained in S. 490 and H.R. 3 were adopted by the Congress.

We believe that any comprehensive trade legislation should be designed to expand trade globally, lower trade barriers in the U.S. and other trading nations and strengthen the multinational trade system. Efforts to reduce our trade deficit by trade restrictive methods are shortsighted and are certain to worsen the trade problems which the legislation is intended to correct. Futhermore, experience has shown that trade restrictive policies are seldom temporary. Placing them in a statute assures their perpetuation long after the alleged need.

The Cost of Protection

Whenever trade restrictions are imposed by the United States, American consumers are subjected to artificially inflated prices. Domestic prices are higher because of the easing of competition; foreign prices rise to compensate for a smaller volume of sales, and retail prices are higher because retailers base their profit margin on the landed cost of goods.

Trade restrictions act as a hidden tax. The consuming public is seldom aware of the reason for these inflated costs. There is no label in a garment or tag on a product with an explanation.

Since it is usually low-cost items, the ones with which we have the most difficulty competing, upon which barriers are imposed, it is low-income and fixed income individuals and unemployed workers (who remain consumers even while they are not earning) who bear the heaviest economic burden. Trade restrictions, therefore, act as a regressive tax, a concept which the Congress has long rejected. It represents a 23% income tax surcharge on people earning less than $10,000 a year, and a 3% tax on those earning more than $60,000 a year ("the Consumer Cost of U.S. Trade Restraints", Federal Reserve Bank of New York Quarterly Review, Summer 1985)

American Consumers have been paying over $55 billion yearly more than they should because of trade restrictions; $65 billion for 1986 only. (Hufbauer, Berliner, Elliott, Trade Protection in the United States: 31 Case Studies, Institute of International Economics, 1986)

Furthermore, consumers are robbed of discretionary income. Having to pay more for the basic necessities such as food, clothing and housing, they will forego purchasing other products. As a consequence, an efficient, competitive industry will be harmed for the sake of protecting an inefficient one. This is a serious misallocation of resources.

Decision-making Authority

CWT opposes any proposal to weaken decision-making authority on 201 or 301, 337 or any other case of the President or to transfer that authority to USTR or any other body. According to present law, the President in making his decision to accept, alter or reject an ITC recommendation for relief to an injured industry, must take into account a number of additional factors, such as: the effectiveness of the proposed relief; competition; international interests and the effect of the remedy on consumers. This mandate to consider the interest of consumers did not exist before the Trade Act of 1974; it is the only time that the consumer is mentioned in the entire law. The consumer interest should be a major factor in the formulation and conduct of trade policy, since the American public pays the ultimate price of trade restrictive practices. All actions which affect consumers negatively, affect the jobs, industries and national economy as well. This is why the mandate to consider the consumers' interest can be neither ignored nor eliminated. The President, the only elected official with a national constituency, is the proper person to fulfill that responsibility.

Automaticity

CWT opposes the call for mandatory relief or retaliation contained in some of the proposals. This would weaken the President's discretionary right to dispose of cases in a manner which he deems most favorable for the nation as a whole. The President must be allowed the flexibility necessary to carry out his constitutional responsibility.

The fact that an industry may be harmed or threatened by imports, particularly fairly-traded imports, does not justify automatic relief at any cost. That cost may be substantial for other industries, jobs, export markets and consumers.

No trade action should be taken in a vacuum, nor can its effects be contained. If the relief entails tariffs, or quantitative restrictions, prices will be inflated. If the product in question is a component part of a U.S. manufactured product, that product will be less competitive in the world market and too costly for domestic consumption.

To the extent that automaticity proposals were prompted by the President's rejection, in 1985, of quotas for imported non-rubber footwear, it is a mistake to conclude that this indicated an unavailability of import relief under the present statute. To the contrary, this case demonstrated the justified application of broad criteria as required by the Trade Act. In this instance, the President did not consider that the ITC's trade-restrictive remedy, based on past history, would be an effective way to help the industry. In addition, he felt that imposing quotas would result in certain retaliation by our trading partners and in a huge cost to consumers.

This last concern was verified in an economic study prepared by the Institute for International Economics under the direction of Dr. William R. Cline which indicated that reducing footwear imports by 18 to 24 percent would have cost American consumers $2 billion annually in extra costs, increased prices by 13 percent and decreased consumption by nearly 3 percent. Total consumer costs would have been $10 billion or higher over a five year period. The consumer cost per job created in the industry would have been as high as $62,400. The ITC, itself, estimated a cost of approximately $50,000 per $14,000 a year job saved. The heaviest part of this burden would have been forced upon low and fixed-income consumers. These statistics certainly justify the President's decision.

Unfortunately, there are occasions when the President has rejected an ITC proposal and opted for negotiated voluntary export restraint (VER) arrangements which would afford comparable relief to an injured industry. VERs do not take into account the consumer interest. The recent cases of steel and automobiles are clear examples. CWT opposes the use of VERs as a method of quantitatively restricting imports without regard for the negative effect of these restrictions on the national interest.

Trade Adjustment Assistance

Protection does save some jobs in the short-term. But it does not come free and it is not cost effective to the national economy. For example, in the automobile sector it costs $160,000 to protect a $28,300 job; in steel, $110,000 for a $27,000 job; in textiles, $42,000 for a $14,000 job and in footwear, $50,000 for a $14,000 job. (ITC Report and Council of Economic Advisors Unpublished Report).

Furthermore, protection does not guarantee job security. It is evident that, in order to achieve competitiveness, American industries will have to become less job intensive and focus their resources on R and D and modernization.

Generally, CWT supports some form of temporary assistance to workers in a non-competitive industry who have been displaced because of imports. (Logic suggests such assistance should be available as well to workers displaced because of retaliation against a U.S. industry and to those whose jobs were related to an imported product which has been affected by a trade-limiting action.) We believe that in developing an effective adjustment assistance plan the emphasis should be on retraining and relocating the worker, not on a direct subsidy to the industry.

CWT finds the proposal of linking import relief to an adjustment plan drawn up by representatives of labor, management, consumers and communities worthy of serious consideration. It raises questions, however, on the ability to determine the type of adjustment necessary to ensure competitiveness in an open market, and how progress in implementing the plan is to be measured. Should this proposal be adopted, the President should retain the authority to determine whether the recommended relief is compatible with the U.S. national economic interest.

Negotiating Authority

CWT strongly supports negotiating authority for a new round of international talks. We have reached a critical time in our trading system, when the multilateral conduct of trade as established in the GATT has been undone by unilateral, bilateral and regional trade actions. Clearly, Article I of the GATT has been seriously weakened. In order to restore confidence in the GATT as the best vehicle for the governance of international commerce, it must be strengthened and its coverage extended to issues of present concern.

Although a list of general objectives would serve as useful guidelines, it would be self-defeating to tie the hands of our GATT negotiators with pre-conditions that would impede their ability to deal with agenda items favorable to U.S. interests. The satisfactory settlement of disputes over the agenda during the preliminary ministerial meetings at Punta del Este is proof of the need for flexibility.

"Fast track" procedures for approval of the agreements reached during the Uruguay round will enhance the viability of our negotiators. Consultations with Congress and the private sector, as frequently as necessary, should be mandated.

Because this new round of international talks involves many new and controversial issues, it is anticipated that the Uruguay round will be prolonged. Therefore, Congressional approval of individual agreements as they are reached would be appropriate and would ensure faster implementation of the agreements.

CWT Recommendations - Proposed Amendments to the Trade Act

As stated in the body of our testimony, the effect of trade actions on consumers and other aspects of our national economy are not visible enough to the public and to policy makers.

We have followed escape clause and unfair trade practices cases over the years, and have been very concerned that the economic impact of trade remedies on consumers and on the nation as a whole is considered only at the very last stage of the decision-making process. By the time the President announces his decision, the American public has been saturated with graphic stories of the problems of the ailing industry and its workers. The effect of a proposed remedy on the nation and its citizenry, however, is never adequately publicized. Unlike an action taken by Congress, the consumers' opportunity to make their views known before the International Trade Commission (ITC) is limited and, unless an independent economic study has been prepared, consumers are denied the information on which to present their side effectively. As a result, there is little public awareness and reaction to such trade actions and to their consequences.

1. CWT believes that the cost of a proposed remedy should be researched and made public from the time the remedy has been selected up to the President's final determination. In this context, we are proposing an amendment to the Trade Act which would require that the ITC prepare and publish an analysis of the economic impact of the duty or import restriction under consideration.

The analysis could include broader issues which the President is mandated to consider. For example:

> An estimate of the cost to consumers of the restrictions.
>
> An estimate of the effect on prices, pre-tax revenues, and jobs in the industry(ies) to be protected.
>
> An estimate of the effect on output, employment and profits in related industries, taking into account the effect on production costs and the international competitive position of these other industries. The estimates should take into separate account the effects of possible retaliatory trade actions by our trading partners.
>
> In the case of quotas or other quantitative restraints, an estimate of the effect on the current balance of the U.S. payments account.
>
> An estimate of the net impact on the GNP.

The remedies proposed to afford relief to an import injured industry have an impact going far beyond the protected sector. If the products involved are inputs for other industries, such as steel and copper, prices and competitive positions in those industries are affected. If the products are for final consumption, such as shoes, the position of retailers is worsened. At the end of the line, whatever the products concerned, the income of consumers is reduced. Beyond that, since import protection is a decision to forego efficiency gains from competition and trade, the national economy loses.

The broader consequences of protection are not adequately recognized in trade laws. Section 202c of the Trade Act of 1974 directs the President to take some of the secondary considerations into account when deciding upon escape clause relief. It does not cover the full range of the adverse effects of protection, nor does it require that the full findings be made public.

Techniques for assessing relative costs and benefits of import relief have been improved in recent years. When such assessments have been made, the basis for decision-making has been notably broadened. The proposal herein is to make the cost-benefit assessment a standard practice in the consideration of claims for protection. It would not prevent grants of import relief but it would assure that decisions about them would be taken in the light of a comprehensive evaluation of their likely economic aftermath. This recommendation was approved by the Ways and Means Committee last year.

2. CWT also proposes that the Congress, before acting on any major trade legislation, publicize the broader costs of such an action. We cannot emphasize enough how important it is for the consumer to understand the broader effects of international actions. We believe strongly that responsible public awareness would result in a more effective conduct of our country's trade policy.

Conclusion

There is no such thing as a perfect statute. However, there are infinite dangers in attempting to revise laws so that they meet the needs and interests of everyone affected without endangering the national interest. CWT believes that the principal shortcoming of the international trading system is that the domestic import relief laws are accepted not as a rule of conduct for U.S. trade policy but as a means of protecting domestic producers from foreign competition or as a means of threatening our trading partners so as to achieve export market expansion. In trying to solve trade problems, we believe it is more efficient to place the emphasis on carrots as well as sticks. In many cases, the waving of the stick, of itself, is trade distorting. Sections 201 and 301, when used judiciously, have generally worked as designed. We should be asking ourselves if our trade practices, albeit better than some others, would stand up to the requirements of our own laws.

At a time when strong protectionist sentiment is endangering our country's open trade posture, it is essential for Congress and the Administration to strive for thoughful trade policies aimed toward a global liberalization of markets rather than the closing of U.S. doors to foreign products. Such policies recognize the fact that a healthy trading system cannot be achieved if the largest trading nation abandons the principles of open multilateral trade in favor of the quick-fixes of protectionism. Protectionism is not an effective solution. It has been tried many times and has failed, at a heavy cost to all concerned, especially the American consumer.

CWT RECOMMENDATIONS

1. An amendment to the Trade Act of 1974, requiring that the International Trade Commission (ITC) prepare and publish an analysis of the economic impact of the duty or import restriction considered on consumers, other industries, exports and the national economy.

2. The President should retain final decision-making authority.

3. The President's discretionary authority should not be weakened by requirements for automatic relief or retaliation.

4. Workers displaced by imports or by trade-restrictive actions should be given temporary assistance in retraining and relocation.

5. The linkage of import relief to an industry adjustment plan should be considered, as long as the President retains final decision-making authority.

6. Negotiating authority for a new GATT round should be given. Negotiators must be allowed sufficient flexibility. Fast track procedure for approval should be adopted. Individual agreements should be approved by Congress as they are reached.

7. The U.S. must not abandon the principles of an open multinational trading system for protectionist policies which are ineffective and costly to consumers.

Consumers for World Trade (CWT) is a national, non-profit membership organization established in 1978. CWT supports expanded foreign trade to help promote healthy economic growth; provide choices in the marketplace for consumers; and counteract inflationary price increases. CWT believes in the importance of increasing productivity through the efficient utilization of human and capital resources. CWT conducts its educational programs to keep American consumers informed of their stake in international trade policy and speaks out for the interest of consumers when trade policy is being formulated.

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Alpheus W. Jessup
Director

STATEMENT OF LEWIS E. LEIBOWITZ, NATIONAL FOREIGN TRADE COUNCIL, INC., WASHINGTON, DC

Mr. Leibowitz. Thank you, Mr. Chairman.

My name is Lewis Leibowitz. I am a member of the National Foreign Trade Council Trade Committee, and chairman of the Council's Trade Remedies Working Group. I am appearing this morning on behalf of the National Foreign Trade Council, an association of over 500 U.S. firms engaged in international trade and investment.

Council members account for more than 70 percent of U.S. exports, and approximately 70 percent of U.S. direct investment abroad. The Council welcomes this opportunity to comment on proposals in Congress aimed at strengthening the U.S. trading position.

It is no exaggeration to state that our standard of living and the economic health of the nation are at risk, unless the U.S., together with its trading partners, can bring about a progressive reduction in the U.S. trade deficit.

We can enumerate the causes of the current unprecedented trade deficit, which has been done quite often before, such as disparities in growth rates of major trading nations; the federal budget deficit; the strength of the dollar; the inability of some U.S. industries to meet competition; Third World debt; and various forms of governmental interventions in trade.

Some of these problems require multilateral solutions, but there are others which can be addressed by Congress. So, Congress has an opportunity this year to make a constructive contribution to the betterment of the U.S. trade position through legislation which will open, rather than close, international markets.

The National Foreign Trade Council has prepared a set of legislative recommendations, and a copy is attached to my testimony.

You have asked that testimony focus on the major legislative proposals before the Congress now. We believe this can only be done in light of the clear criteria which we have for desirable and undesirable actions. And I would like to articulate a couple of each.

With respect to desirable actions, the NFTC supports a number of proposals embodied in these bills.

First, reduction of the federal budget deficit. It is crucial to restoring the U.S. merchandise trade balance that our federal fiscal deficit be reduced, because it sustains relatively high interest rates, which in turn, keep the value of our currency and the prices of our exports high.

Second, strengthening international trading rules. We strongly support authority for U.S. negotiators in the Uruguay round of multilaterial trade negotiations under the GATT. We also recommend that our negotiators have maximum flexibility under this authority, and not be constrained by overly-detailed negotiating objectives.

Third, we need Federal policies that do not unnecessarily harm our trade position. Accordingly, we support the creation of a coordinating unit in the White House to advise the President on the impact of domestic and international policies on the ability of U.S. companies to compete internationally.

Fourth, the competitiveness of U.S. industry must be enhanced through a stronger national commitment to educational excellence, more effective incentives for research and development, the requirement of a competitiveness impact statement for Federal programs, and improved worker retraining programs financed out of general revenues.

In particular, we strongly support proposals to amend provisions in the tax code on the allocation of research and development expenses, so as to eliminate incentives to locate R&D facilities abroad.

Intellectual property rights are another area where improvement is necessary and feasible. Such rights should be strengthened by, among other things, removing from Section 337 of the Tariff Act, the requirement to prove injury to a domestic U.S. industry in most cases, and removing the requirement for an efficiently and economically operated industry in all intellectual property cases.

Next, unnecessary and counterproductive export controls must be reduced. Consideration should also be given to stricter limitations on the exercise of foreign policy export controls. Such controls have rarely achieved their objectives and have caused U.S. suppliers to lose major export markets.

I turn now to the more contentious issue of how the United States should proceed against other nations which trade unfairly. Mandatory retaliation as a feature of our traditional discretionary trade laws exposes us to the risk of major trade conflicts. In particular, we strongly oppose Congressman Gephardt's proposal for retaliation against countries maintaining large bilateral trade surpluses with the United States.

Section 301 of the 1974 Trade Act must be maintained as a negotiation, not a retaliation statute.

With respect to section 201, we favor legislation calling for a vigorous analysis of the likely risks and benefits of temporary import relief on petitioning industries and other affected sectors.

The legislation you are considering contains a number of provisions, some of which we have previously discussed, which we feel would have counterproductive results. Those are included in my testimony, and in the interest of time, I will skip them.

Finally, we oppose legislation which addresses specific sectors. We believe that it is important that the Administration pursue trade negotiations and make trade policy based on the overall interest of U.S. producers and consumers, rather than based on measures to accommodate the most vocal industries.

Finally, we oppose the House Energy and Commerce Committee proposals to restrict foreign acquisition of domestic firms, unless clear national security grounds exist.

We are very grateful for the opportunity to share our views with the committee, and would like to commend to you the National Foreign Trade Council legislative proposals.

Thank you.

The CHAIRMAN. Pleased to have Mr. Oswald, who is the Director of Economic Research for the AFL-CIO. Mr. Oswald.

[The prepared statement of Mr. Lewis E. Leibowitz follows:]

4/7/87

NATIONAL FOREIGN TRADE COUNCIL, INC.

TRADE LEGISLATION PROPOSAL

INTRODUCTION

The persisting deficit in trade of U.S. goods and services has greatly increased the probability that the Congress will pass trade legislation in 1987. The debate over trade law has broadened to include macroeconomic and social policies which affect the ability of the United States to compete in international commerce. Because this debate in which the nation is now engaged raises a great many fundamental issues about our economic structure, the National Foreign Trade Council presents herewith its recommendations for legislation which would address some of the causes of present imbalances while preserving the open international economic system which permits market forces to provide the benefits of competition and efficient allocation of resources. Included are proposals for changes in current trade laws which would help to reduce our trade deficit, as well as broader proposals, which could be embodied in a "sense of Congress" resolution, focusing on some of the structural factors which contribute to the country's trade and current account deficits.

These proposals have been developed for the consideration of the 100th Congress by the NFTC International Trade Committee and its Working Group on Trade Legislation.

I. INTERNATIONAL TRADE COMPETITIVENESS

Purpose - The competitiveness proposals set forth below are an integral and essential part of the overall purpose of the NFTC's recommendations for a 1987 trade bill -- to strengthen trade-related laws where needed and to provide a supportive environment to improve U.S. industry's ability to compete abroad and in the U.S. on an equitable basis. Some of the recommendations address the economic and human consequences of following a free trade policy, such as worker dislocation. Others address broader concerns such as the structural deficiencies of the existing public policy apparatus which permit the development of domestic policies with little or no consideration of their impact on industry's ability to compete in world markets. Overall, the recommendations reflect the inescapable truth that the economic health of the U.S. depends on the ability of U.S. industry to meet international competition.

Sense of Congress Resolution - It is recommended that trade legislation adopted by Congress include a preamble, or sense of Congress Resolution stating the following:

- The United States should pursue a combination of fiscal policy and monetary policy that will lower the cost of capital by (1) promoting a higher rate of savings, (2) reducing the drain on savings caused by federal borrowing due to a persistent budget deficit and (3) reforming further the tax system to encourage savings and long-term investments.
- The Administration should pursue multilateral negotiation among our trading partners to create conditions for greater exchange rate stability at sustainable levels within an open system of trade and capital movements. There should be better coordination of domestic economic policies of the major countries in order to promote greater discipline and symmetry in the adjustment process.
- International trade promotion should be one of the highest priorities in our national trade policy with the President supporting joint public and private sector efforts to remove foreign barriers to U.S. exports and overseas investment.
- The Federal government, along with industry, labor and academia, should accelerate support and funding of basic education programs, especially in math, science and foreign languages -- a necessity to improve the ability of the U.S. workforce to remain competitive.

Legislative Recommendations -

A. Competitiveness Impact Statement - A competitiveness impact statement should be prepared by the relevant federal department or agency for all major legislative and executive branch proposals, to focus attention on the impact on our trade competitiveness of disparate domestic and international policies. No private right of action would be created by this proposal.

B. Promoting Exports & Foreign Direct Investment -

1. A coordinating unit should be established within the White House to advise the President on the impact of domestic and international policies, including exchange rates, credit, debt and taxation on the ability of U.S. companies to export and pursue growth strategies that include foreign direct investment.
2. Adequate and competitive export financing should be provided through Eximbank and other relevant institutions. This should include an

aggressive mixed credit program to combat unfair foreign government export subsidies with the ultimate goal of multilaterally eliminating mixed credit.

3. Export promotion programs administered by the Department of Commerce should be strengthened and expanded, especially those designed to provide U.S. business with critical information about foreign markets. State Department and Department of Commerce Foreign Commercial Service support for U.S. firms in U.S. embassies abroad should also be strengthened.

4. U.S. aid programs should be reviewed to determine how they further U.S. foreign economic policy goals.

5. Export control statutes should be amended so that foreign policy controls on exports should apply only when all practical diplomatic sanctions have been exhausted, only if export controls are likely to achieve stated goals, only if applied multilaterally, and only if the validity of pre-existing contracts is recognized and the controls are not applied extraterritorially.

6. Necessary funding for the Multilateral Investment Guarantee Agency and multilateral development banks should be provided, and OPIC and MIGA should provide reinsurance facilities to the private political risk sector.

7. The Foreign Corrupt Practices Act should be clarified by replacing the current reason-to-know standard with a prohibition on domestic concerns directing or authorizing expressly, or by a course of conduct, bribery by means of a third party. The title of the act should be changed to the "Business Practices Act" to remove the implication of wrongdoing embodied in the current title.

C. Research and Development -

1. Federal R&D expenditures to support multidisciplinary basic science and technology centers should be given higher priority but should be subjected to more rigorous review procedures.

2. Commercial applications of technology should be increased by permitting federal contractors to acquire ownership of software, engineering drawings and other technical data developed under government contracts in exchange for royalty-free use by the government.

3. Programs designed to disseminate new technology to the private sector should be developed by each government agency participating in federally sponsored R&D activities.

D. Antitrust Reform - Because corporate mergers can contribute to the ability of U.S. industry to meet changing competitive conditions, Section 7 of the Clayton Act relating to mergers should be amended: (1) to clarify the substantive standard for the requisite anticompetitive harm; (2) to clarify the required level of certainty by imposing a requirement that there be "significant probability" that a merger will have anticompetitive effects before it can be deemed illegal; and (3) by delineating specific factors that must be considered in assessing the legality of a merger. Other changes should include detrebling of antitrust damages, a claim reduction provision, and removing excessive restrictions on interlocking directorates.

E. Retraining and Worker Dislocation -

1. The current federal unemployment insurance system should be replaced with one using general funds that would permit converting benefits into employment and retraining vouchers.

2. A federal grant program should be established for up to 50% of the cost of upgrading, retraining and educating workers whose jobs are at risk because of skill obsolescence or adjustments that employers undertake to enhance their competitiveness.

F. Foreign Income Tax Provisions Regarding R&D -

1. U.S. tax rules should be amended to provide reliable long-term incentives to research and development in the United States by making the three-year R&D credit permanent and determined by a fixed instead of moving three-year period -- the fixed period being indexed annually for inflation.

2. Tax rules on apportioning the location of R&D expense should be amended so that they will not serve as an incentive to locate R&D abroad.

G. Export Trading Companies - The Export Trading Company Act should be amended to clarify the requirement that a bank-affiliated ETC must be principally engaged in facilitating U.S. trade. It is recommended that an Export Trading Company over a period of 3 years be required to generate more revenue from exporting or facilitating U.S. exports than from importing into the United States.

Therefore, earnings from 3rd country trade or other activities not representing U.S. exports or imports should not be included in the ratio of U.S. exports to U.S. imports.

II. GATT ROUND NEGOTIATING AUTHORITY

Purpose - The purpose of the recommendations which follow is to provide negotiators with broad and flexible negotiating authority to obtain expanded

opportunities for U.S. firms abroad and to strengthen international understandings on what is fair and unfair in international trade. To this end, several policy objectives are set forth to provide guidance to our GATT round negotiators without depriving them of the flexibility they need to be successful. The subject of multilateral, regional and bilateral agreements is also addressed to indicate a clear preference for the broadest possible agreement.

Trade negotiating authority should be conferred in a manner which will allow U.S. trade negotiators to complete their task within a time frame consistent with Congressional needs for a GATT round which moves as quickly as possible toward its conclusion.

Finally, frequent consultation with the private sector is recommended to ensure that the desires and needs of the U.S. business community are taken into account fully and comprehensively.

Legislative Recommendations -

A. Objectives for the Next GATT Round - Authority for the new GATT Round of Negotiations should contain the following objectives:

1. extension of GATT rules to cover services, investment and intellectual property rights;
2. strengthening of existing GATT rules regarding dispute settlement, safeguards and trade in agricultural commodities;
3. strengthening of existing GATT codes on subsidies, antidumping laws, and government procurement; and developing definitions and disciplines regarding the negative effects of certain practices, including natural resource subsidies, targeting upstream subsidies and downstream dumping;
4. expansion of competitive opportunities for U.S. exports in all foreign markets, including developing countries and newly industrialized countries;
5. greater coordination, consistency and cooperation between international trade and monetary systems and institutions;
6. clarification and strengthening of GATT Article XVII on State Trading.

B. Regional and Bilateral Agreements - The bill should specify that while the foregoing objectives are to be achieved by multilateral agreements, authority to negotiate regional or bilateral agreements should also be conferred. Such agreements should normally be open to other countries willing to accept the same commitments, so as not to undermine the multilateral system.

C. Trade Negotiating Authority -

1. Non-Tariff Authority - Section 102 of the Trade Act of 1974 should be amended to provide non-tariff negotiating authority for four years from January 1, 1987 until January 1, 1991. This extension of authority should include multilateral, regional and bilateral agreements. The U.S. Trade Representative should be required to submit annual reports to the Senate Finance and House Ways & Means Committees advising them of the progress of the negotiations. This negotiating authority would be extended automatically for an additional one-year period beyond January 1, 1991, if, no later than January 1, 1990, the USTR submits reports to the Senate Finance and House Ways & Means Committees indicating that sufficient progress has been made to justify continuation of the negotiations.

Specific non-tariff barrier agreements should be submitted to Congress for no-amendment, "fast track" consideration under the procedures of § 151 of the Trade Act of 1974. The availability of those procedures should be extended along with the negotiating authority and for such time beyond as may be required for consideration of any agreement reached pursuant to that negotiating authority.

2. Tariff Agreement Authority - The President's authority under § 101 of the Trade Act of 1974 to negotiate tariff reduction agreements and proclaim the results should be restored. This authority should be extended until January 1, 1991. The same requirement of annual reports to Congress for non-tariff negotiating authority should be applicable here as well. Extension of the authority for an additional one-year period should be also available on the same basis as for non-tariff negotiating authority.

D. Private Sector Consultation - The USTR should be statutorily required to consult with private sector advisory committees regularly on the negotiations.

III. INTELLECTUAL PROPERTY

Purpose - The violation of intellectual property rights constitutes a threat to U.S. competitiveness, to the owners of those rights and to the system of international trade. Without reasonable assurance that the fruits of innovation will be allowed to produce an economic return there will be fewer new products and services and less political tolerance of economic adjustment problems between countries. Present law should be improved in the manner set forth below.

Legislative Recommendations - Section 337 of the Tariff Act of 1930 should be amended as follows:

A. Injury Test - The requirement to prove injury should be eliminated for intellectual property law violations.

Explanation - In the area of intellectual property it is difficult and time consuming to show that an owner lost employment or specific sales or suffered from threat of injury due to an infringement.

B. Economic and Efficient Industry Test - The requirement that a U.S. industry be "economically and efficiently operated" should be deleted in cases involving Federal intellectual property law on products from countries where protection of intellectual property is not equivalent to that provided by the United States.

Explanation - Deletion of this requirement will encourage movement by U.S. trading partners toward satisfactory protection of intellectual property rights.

C. Existence of an Industry - For foreign holders of U.S. patents, the requirement of proof that an "industry" exists should be deleted provided that the country of nationality of the patent holder provides comparable protection to U.S. patents.

Explanation - This provision would conform to the practices of many of our trading partners and provide additional incentive for adherence to international standards of intellectual property protection.

D. Expansion of Industry Definition - Section 337 should be amended to expand the definition of industry to include a university or research corporation which engages in licensing of intellectual property rights.

Explanation - This amendment would encourage potential intellectual property pirates to seek license agreements.

E. Time Limits for Temporary Exclusion Orders - The ITC should rule on temporary exclusions within 90 days after initiation of the investigation (150 days for complicated cases).

Explanation - This change would prevent a U.S. company from being injured by a surge in imports prior to a final decision and would reduce uncertainty for all parties in the process which now has no time limits.

F. Cease and Desist Orders - Section 337 should be clarified to permit cease and desist orders to be used in addition to, or in lieu of, exclusion orders.

Explanation - Exclusion orders, which bar goods of a particular description from the market, can be a severe penalty because they can inadvertently block imports of fairly-traded goods. Cease and desist orders offer another, more flexible tool for dealing with violations because they prohibit only the unfair conduct and do not affect fairly-traded goods.

G. Seizure and Forfeiture - The ITC should be authorized to order seizure and forfeiture of goods imported in violation of Section 337.

Explanation - With the delays inherent in litigation, a U.S. industry can be substantially injured by infringing goods imported prior to administrative action. Moreover, violators should not be allowed to gain the economic benefits from their action.

H. Process Patents - Unauthorized importation of products produced abroad by a process that is patented in the U.S. should be designated as unfair practices under Section 337.

Explanation - Other major industrialized countries protect against this form of unfair competition.

I. Default Provisions - The ITC should be allowed to issue default judgments.

Explanation - Under current law, if a defendant refuses to appear, the plaintiff has no access to discovery against the absent defendant but is nonetheless required to prove his entire case.

J. Implementation of § 337 Orders - The ITC rather than Customs should be required to determine whether imported products, which are similar to but may not infringe the patents considered in the original § 337 proceeding that resulted in an exclusion order, in fact do infringe on intellectual property rights adjudicated in the initial proceeding.

Explanation - The ITC presently does not decide whether products imported after entry of an exclusion order are in fact subject to exclusion. This leaves the Customs Service to decide potentially complex patent infringement issues. The ITC, with much greater expertise in these matters, should decide these question, thus ensuring due process for importers and complainants alike.

IV. EXPORT CONTROLS

Purpose - Present excessive and unilateral export licensing requirements under the Export Administration Act produce anticompetitive effects for many businesses attempting to market products in foreign markets. Foreign purchasers of U.S. high technology products observe that time intervals to receive proper export authorization from the U.S. Government are far greater than those of other governments. These intervals can be reduced by decontrolling low technology items, providing a license free zone for COCOM destinations, establishing new de minimus limits for re-exports of parts and components, redefining foreign availability determinations, and removing statutory restraints prohibiting bulk licensing to the People's Republic of China (PRC).

Legislative Recommendations -

A. Export of Low Technology Items - U.S. licensing requirements should be eliminated for exports to non-controlled countries of goods with performance characteristics so low that the goods may be exported to controlled countries upon notification to COCOM.

Explanation - The extension of the G-COM procedure, established by the Export Administration Amendments Act of 1985, to all free world destinations would reduce the licensing requirements and time delays resulting for U.S. businesses.

B. Re-Export Controls - The U.S. licensing requirement should be eliminated for re-export of goods to or from countries participating with the U.S. in COCOM and other countries maintaining comparable controls pursuant to Section 5K of the Export Administration Act of 1979. Also, re-export requirements should be eliminated for U.S. parts and components falling under de minimus limits.

Explanation - The elimination of these U.S. requirements will enhance U.S. abilities to export products to countries which participate with the U.S. at COCOM. The present requirements, which are largely unenforceable, continue to offend and irritate U.S. allies. The establishment of certain de mini-mus values should thwart efforts to "de-Americanize" foreign products since foreign manufacturers may export products that incorporate U.S. origin parts and components below the de minimus limits.

C. Foreign Availability - Congressional intent with regard to the definition of "available in fact to controlled countries" should be clarified to include availability in Western countries in which there are no restrictions on exports to the Soviet Bloc or in which those restrictions are ineffective.

Explanation - This clarification of Congressional intent will result in significant increases in the decontrol of goods based on foreign availability. Such decontrol of goods will eliminate the licensing requirement that presently exists.

D. Distribution Licenses for Exports to the PRC - Statutory prohibitions on the use of a distribution license for exports to the People's Republic of China should be removed.

Explanation - Because China is still listed in Section 620(f) of the Foreign Assistance Act of 1961, issuance of a distribution license authorizing multiple exports of goods to approved users is currently precluded. Eliminating this statutory prohibition will allow a large volume of licensing applications for exports to the PRC to be processed quickly and efficiently.

V. SECTION 301 OF THE TRADE ACT OF 1984

Purpose - Section 301 provides authority for the President to seek the elimination of unfair barriers to U.S. trade and investment through negotiation and if necessary retaliation by restricting access to the U.S. market.

It authorizes the President (1) to enforce U.S. rights under international trade agreements and (2) to respond to foreign practices not covered by international agreements but which are unreasonable or discriminatory and restrict U.S. exports.

Legislative Recommendations -

A. Transfer of Authority - The USTR should be authorized to make the determination as to unfairness in 301 cases.

The USTR should recommend to the President, when an affirmative "unfairness" decision is made, the appropriate U.S. response.

In cases where international bodies have concluded that an unfair practice exists, the President should be authorized to delegate to the USTR the authority to decide and implement a retaliatory trade action.

Explanation - Current law is ambiguous as to whether the President or the USTR decides whether an action is "unfair" under the 301 statute. It is important in 301 cases that the President retain final authority, failing negotiations, to decide to retaliate after weighing different national interests, particularly when there is not international consensus on the illegality of the barrier involved.

B. Investigations - The USTR should issue a determination regarding "unfairness" and issue a recommendation for relief within six months of the initiation of the investigation unless the USTR notifies the Congress that special circumstances require additional time of up to three months.

Explanation - Present law allows for a nine-month period in most cases but many of these investigations involve practices which are already well-documented and therefore a shorter period is appropriate.

C. Required Action - The President or the USTR should be required to act within 15 months from the date of initiation (or 12 months in the case of an affirmative GATT panel ruling) against 301 abuses found by the USTR to be unfair. They should be required either to negotiate the satisfactory elimination of such practices or retaliate unless the President reports to Congress on the reasons why agreement has not been reached and why it would not be in the national interest to retaliate.

In the case of an unresolved dispute, no retaliation would be required or authorized to continue if a GATT panel found that for a product or service covered by the GATT there has been no unfair practice or that no trade agreement benefits have been denied.

Explanation - Present law allows the President to postpone resolution of a case indefinitely where negotations are unsuccessful. The proposed change would not require retaliation but would require a timely explanation to Congress on why the dispute had not been resolved and if no retaliatory action was taken, why this is in the national interest.

D. Additional Remedies - The President should be empowered to direct any U.S. federal department or agency to review its policies and programs which involved or have impact upon a country whose practices have been determined to be unfair and to make recommendations to the President as to what measures might be taken.

Authority to institute trade actions to offset or eliminate injury from unfair trade practices should include denial of GSP benefits; authority to enter into trade liberalizing bilateral or regional agreements; and appropriation of funds to offset violations of export financing agreements.

Explanation - Present law does not encourage the President to use the multiple forms of leverage afforded by U.S. economic and political power to resolve trade cases. Since 301 issues often involve policy questions which go beyond traditional notions of trade policy, a wider arsenal of U.S. measures should be available to the President for use at his discretion.

VI. SECTION 201

Purpose - Section 201 of the Trade Act of 1974 allows U.S. industries which are seriously injured by increasing imports of a product to obtain temporary import relief in the form of quotas and tariffs against all imports of that product from all countries, even though no unfair or illegal trade practices are involved. The purpose of Section 201 relief is to provide time for the U.S. industry to adjust to increased international competition.

Despite disagreements over particular cases, Section 201 generally has worked as intended. Since the standards were last eased in 1974, the ITC has found import-induced injury in 33 of the 56 cases, some form of import relief has been afforded in 14 cases, and in several other investigations the domestic industry has gained import relief through related measures. Amendments to Section 201 should be considered with caution, because 201 provides for import restrictions on fairly traded goods, and U.S. trading partners are entitled to restrict their imports of U.S. products in response to American trade restraints imposed under Section 201.

The following proposals are intended to improve Section 201 by (1) ensuring that import relief granted in a 201 investigation effectively assists injured industries in adjusting to international competition; (2) disciplining Presidential decisions to grant or deny import relief; and (3) expanding the President's options in fashioning relief for injured industries. At the same time, these proposals preserve essential Presidential decision-making and discretion and maintain the traditional and important distinction between fair and unfair competition.

Legislative Recommendations -

A. Increasing Focus on Industry Adjustments - Section 201 procedures should be amended to increase consideration of the likely effectiveness of import relief in fostering an industry's adjustment to import competition and to make import relief contingent upon continuing adjustment efforts. Specifically, each petitioner should be required to submit a detailed adjustment plan with its petition. The petition should include a provision for an orderly transfer of capital out of industry. The ITC should conduct a hearing and issue a finding regarding the probable effectiveness of industry adjustment efforts; the President should be required to evaluate the probable effectiveness of adjustment plans in determining the relief he will grant; and industry should be required to undertake specific adjustment efforts as a condition of receiving relief. The President should be required to monitor the industry's achievement of adjustment goals once relief has been granted, and be empowered to terminate or modify relief if agreed actions are not taken; the ITC should conduct annual follow-up reports on the industry's adjustment efforts; and the ITC should evaluate the effectiveness of import relief and the adjustment plan after their termination.

Explanation - The purpose of temporary import relief under Section 201 is to provide time for a U.S. industry to adjust to new international competitive conditions. Yet, present 201 procedures do not always ensure that import relief actually facilitates this adjustment. As a result, industries receiving import relief frequently have not used the relief period to improve their competitive position. These proposals would increase the focus on adjustment in 201 cases by requiring an industry requesting relief to develop specific plans for facilitating adjustment, requiring the ITC and the President to analyze the likely effectiveness of industry adjustment efforts, making the granting and continuation of relief contingent upon industry adjustment efforts, and analyzing the success of 201 relief each year and once it has expired.

B. Disciplining Presidential Decisions - The President should be permitted to reject the ITC's recommended import relief or fashion alternative relief only when the costs to other sectors of the U.S. economy of granting relief outweigh the benefits of relief to the petitioning domestic industry. In addition, if the President denies relief or grants less relief than was recommended by the ITC, he should be required to present to Congress a detailed report enumerating specific reasons and findings.

Explanation - Under present 201 law, the President may deny or modify the ITC's recommended relief if it is not in the "national economic interest," and his brief report to Congress frequently provides little explanation of the decision. This absence of a detailed explanation has led industries denied relief to complain that the President has excessive discretion and may deny relief for any reason. The proposed amendment would discipline the President's remedy decision by requiring him to make a specific and detailed determination that the costs of relief to the economy outweigh the benefits, while preserving his discretion to balance competing interests and determine the overall U.S. economic interest.

C. Adjustment Assistance Program - An adjustment assistance program should be available to all dislocated workers and should be funded from general revenues.

Explanation - Such a program is an integral part of a smooth trade adjustment process and as such deserves priority attention.

D. Automatic Adjustment Assistance - For workers dislocated by import competition, the President should be required to grant adjustment assistance to workers after an affirmative ITC injury determination, whether or not he chooses to grant import relief.

Explanation - Under present law, the President has the discretion to grant or deny adjustment assistance to workers and firms as part of his relief package. The proposed amendment recognizes that the ITC's determination that the industry is being injured by imports in itself indicates a need for adjustment assistance for workers, regardless of whether the President determines that import restrictions also are in the national economic interest.

In the alternative, the ITC should be authorized to recommend import relief and/or adjustment assistance to the President after an affirmative injury determination.

Under existing Section 201 procedures, the ITC must choose between import relief or adjustment assistance, even though both may be appropriate in a specific case. The proposed amendment would expand the ITC's ability to fashion a relief package which best addresses the needs of each particular industry.

E. Expanding Relief Options - The President should be authorized to implement additional relief options, such as limited antitrust exemptions to allow mergers in special cases, or multilateral negotiations.

Explanation - Under present Section 201, the President is authorized to impose duties or import restrictions and grant adjustment assistance to industries which have been injured by increasing imports. The proposed amendment would allow the President to take other actions either instead of or in addition to these existing remedies. In some cases, limited antitrust exemptions may be appropriate to permit the restructuring of an injured U.S. industry.

F. Duration of Relief - An industry should be prohibited from receiving import relief during more than two separate periods, and the sole objective of relief during the second period should be for the orderly transfer of resources out of the industry. Import relief in a second case should not exceed the relief granted in the first case.

Explanation - Present law allows an industry to receive relief for up to five years, with a possible extension of three additional years. After a two-year lapse, an industry may file once again for relief, with no limit on the number of times relief may be granted. This allows Section 201 to become a method for the permanent protection of an inefficient industry, rather than a temporary adjustment mechanism. For example, 13 of the 56 Section 201 investigations have involved industries which were the subject of prior investigations. The proposed amendment (which would impose a thirteen-year cap on import relief) would place additional pressure on injured industries to use the relief period for adjustment.

VII. ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Purpose - The antidumping and countervailing duty laws provide for the imposition of special duties to offset dumping (selling merchandise within the United States at less than its "fair value") and subsidization of merchandise from abroad sold or likely to be sold in the United States. The revisions proposed herein serve the broad purposes of improving and refining existing legislation, with a view to ensuring timeliness and certainty of standards in administrative proceedings, reducing opportunities for evasion, and addressing the complex question of non-market economy imports.

Legislative Recommendations -

A. Reviews - Present law, 19 U.S.C. § 1675(a), should be amended to require the International Trade Administration to complete requested administrative reviews of outstanding antidumping and contervailing duty orders within a twelve-month period.

Explanation - Present law directs that the International Trade Administration ("ITA ") upon request, "shall review, at least once during each twelve-month period beginning on the anniversary of the date of publication of a countervailing or antidumping duty order, the amount of the net subsidy or antidumping duty." The Court of International Trade, however, has held that the twelve-month limit for publishing review results is directory only. This change would clarify that the present statutory time period is not directory, but mandatory and would help to redress delays suffered both by petitioners and respondents.

B. Review of Data for Revocation of Countervailing or Antidumping Duty Orders - Present law, 19 U.S.C. § 1675(c), should be amended to provide explicitly that the ITA must review, in its decision whether or not to revoke an outstanding order, the respondents' imports during the periods leading to and concluding with the date of publication of ITA's tentative determination to revoke.

Explanation - Lack of specificity about the time period or data to be reviewed provides a loophole which can politicize the process. The mandatory time limit for completing Section 751 reviews, proposal A, supra, together with a finite period for review triggered by ITA's tentative revocation determination, provide a timely and straightforward revocation procedure upon which petitioners and respondents may reasonably rely.

C. Determination of Foreign Market Value - When applying a constructed value analysis under Section 773(e), ITA should be required to allocate to general expenses and profit actual costs or that percentage of costs which is usual and ordinary in the custom of the industry under investigation.

Explanation - The amendment would help to counteract the unpredictability inherent in the choice of a product of a similar class or kind as the basis for constructed value. Present law, 19 U.S.C. § 1677b(e)(1)(B)(i, ii), requires that in determining foreign market value ("FMV") under a constructed value analysis, the ITA shall use an amount for general expenses and profit, equal to the amount usually reflected in sales of the same class or kind of merchandise made by producers in the exporting country, except that a minimum of 10% of cost must be used for general expenses, and a minimum of 8% of costs and expenses must be used for profit. This change would prevent the artificial inflation of FMV in cases where a foreign industrial sector does not customarily operate with an expense margin as high as 10% or a profit margin as high as 8%. As the customary percentage would generally be applied, the proposal would reserve the 8% and 10% rules for instances where no better information is available.

In addition, the proposal would include in the computation of FMV under the constructed value approach in Section 773(e), direct and indirect expenses related to sales of the goods which are actually attributable to sales of the products for export, in order to take into account any applicable differences in the circumstances of sale in the exporter's domestic market and the export market.

D. Non-Market Economy Dumping and Subsidies - Section 773(c) of the Tariff Act of 1930 should be amended to provide dumping criteria for non-market economies (NME) allowing for the possibility of market-based industries or sectors within such economies. An exporting country's products would be subject to this provision when the ITA finds that the industry meets the statutory criteria. Any market-based sectors would be evaluated under normal antidumping procedures.

For NME sectors, ITA would determine a weighted average price for the same product imported to the U.S. from market economies in arm's length transactions. This would be the presumptive measure of FMV. However, the NME respondent would have the opportunity to establish that it is the lowest cost producer of the product. In cases where there are no other imports of the same product, ITA would determine a weighted average of U.S. domestic prices based on Department of Commerce data, or in the absence of such data, based on best information available.

For the same reasons cited above, the proposal would specify that the countervailing duty provisions in Section 303 of the Tariff Act of 1930, 19 U.S.C. § 1303, do not apply to imports from non-market economies. Accordingly, the new provisions dealing with non-market economy imports would apply to cases that would previously have arisen under the antidumping or countervailing duty provisions.

By the same token, any market-based sectors would be valuated under normal antidumping and countervailing duty procedures.

Explanation - The use of the current constructed value/surrogate country approach to apply dumping methodology to non-market economy imports has resulted in inequitable, often random and unpredictable results, since the realistic calculation of dumping margins requires analysis of free-market prices, as opposed to the artificially set prices which are typical of non-market economies.

E. Countervailable Subsidies - Section 771(5), 19 U.S.C. § 1677(5), should be clarified to ensure that the specificity test (i.e., whether a domestic subsidy is provided to a specific group of enterprises or industries as opposed to being more widely available) is applied to any domestic subsidy. The ITA should examine each case to determine whether as a matter of fact the benefit in question is specific to a group of enterprises or industries or to an enterprise or industry. The amendment would codify ITA practice and confirm the commitment to the specificity test derived from the GATT Subsidies Code, which represents the only standard agreed upon between the U.S. and its trading partners for distinguishing countervailable subsidies from noncountervailable subsidies. It would be impracticable to administer any subsidies regulation if such a specificity test is not applied in order to exclude subsidies of broad application (e.g. road building, schools, certain tax treatment, etc.).

Explanation - Under the present definition of "subsidy" in this section the requirement that a domestic subsidy be provided to a specific group of enterprises or industries, as opposed to being more widely available, is expressed only in application to four types of domestic subsidies given as an illustrative list. Since the ITA may determine that other types of domestic subsidies exist, the question arises whether these other subsidies must also meet the specificity test.

F. Upstream Subsidies -
1. Section 771-A, in its opening clause, should be amended to make clear that the specificity test contained in Section 771(5)B also reaches upstream subsidies.

Explanation - This amendment would codify current ITA practice, uphold the GATT standard and help to identify out of the mass of domestic upstream subsidies which should be remedied.

2. Section 771-A(a) also should be amended to require that the competitive benefit bestowed by a subsidized input on the final exported merchandise meets the specificity test.

Explanation - This amendment would codify current ITA practice and make clear that the specificity test on upstream subsidies must be applied in a two-tier test where both the initial impact and the competitive benefit to the final exported merchandise are sector or industry-specific.

G. Persistent Dumping and Subsidy Practices - The ITC should be allowed to make accelerated injury determinations using simplified and reduced information requirements in petitions initiating investigations when,
1. the ITC has reached an affirmative preliminary or final determination of injury in an antidumping or subsidy case within the preceding year;
2. the prior finding covers the same product as the new investigation;
3. the initiating petition certifies that there are no changes of circumstances in the relevant industry that would negate the validity of the prior investigation's findings;
4. in the case of a new investigation of imports from a country not covered in the prior investigation, the cumulative effect of these additional imports is more than de minimus.

Explanation - Persistent or "hit and run" dumping and subsidy practices are potentially troublesome and should be discouraged because they may defeat the ability of U.S. law to remedy dumping or subsidy practices.

H. Diversionary Dumping - In cases of diversionary dumping, i.e., when imports already subject to an antidumping order in the U.S. enter the U.S. market in the form of inputs into other products sold at less than fair value, the ITA should be allowed to calculate fair market value (FMV) of the import according to the actual price paid for the input. If this data is unavailable, the FMV determined under the prior antidumping investigation for the input would serve as the "best information available."

Explanation - This proposal would avoid circumvention of existing antidumping orders without unfairly penalizing exports which are manufactured with inputs acquired at fair market value by giving manufacturers a chance to show such costs. Also, this change would conform to GATT obligations to link dumping duties to actual injury caused by dumped products.

I. Material Injury or Threat of Material Injury - The ITC should consider, to the extent possible, the size of a net subsidy or dumping margin as a factor in causing or threatening material injury in order to assess correctly the impact of imports. Consideration of this factor does not create a presumption that injury is directly proportional to the size of a net subsidy or margin. The question of an exporting country's domestic trade policies other than such subsidies or margins, such as export targeting, is beyond the scope of this provision and would be examined exclusively in the context of Section 301 investigations.

Explanation - This refinement of the statutory language is necessary because existing law and legislative history simply require analysis of material injury "by reason of imports" without specifically requiring the ITC to trace the effect of any subsidy or dumping margin. The amendment would resolve differences in ITC interpretation of the statute.

STATEMENT OF RUDY OSWALD, DIRECTOR, ECONOMIC RESEARCH DEPARTMENT, AFL-CIO, WASHINGTON, DC

Mr. OSWALD. Thank you, Mr. Chairman. I am happy to be able to present to you some of the comments of the AFL-CIO on this trade crisis that the country faces today.

As you know, the trade deficit has increased from $40 billion in 1980—quadrupled to $170 billion last year—and has changed from an oil deficit to a manufacturing deficit. Manufacturing, which was in surplus in 1980, was in deficit by some $145 billion in 1986. And today, some 2 million less manufacturing workers are employed than in 1979.

As one looks at the trade deficit, one becomes impressed that 75 percent of that trade deficit is accounted for by just six countries: by Japan, Canada, West Germany, South Korea, Taiwan, and Italy. It is those six countries that account for three-fourths of all the trade deficit that the country is plagued with.

The AFL-CIO as urged the adoption of a comprehensive program to address the Nation's trade problems and reduce the trade deficit. Such a comprehensive program must contain an effective mechanism to truly reduce the trade deficit. In addition, the AFL-CIO believes that worker rights must be incorporated into U.S. trade law. Changes in trade law that provide timely and predictable relief to workers and industries injured by imports and that address new foreign discriminatory commercial practices are features that long should have been incorporated into the Trade Act. Legislation is also required to deal with the problems of specific industries devastated by trade.

This morning, Mr. Chairman, I would like to focus on just two bills that are before your committee, because I think that they are often misunderstood and I think are important elements of any trade legislation.

First, I would like to deal with S. 499 by Senator Riegle, which would provide a mechanism by which the President could negotiate; and if he cannot negotiate, that he has some weapon in his pocket that would require some sort of action that the country would take if agreement cannot be reached.

Most other negotiations always have a mechanism that can be used if agreement can't be reached, and we believe that S. 499 provides that sort of mechanism.

Under the current arrangements, unfair trade practices are investigated and negotiated about, and finally retaliated against one by one. As soon as one unfair practice is dealt with, another crops up and takes its place. The result is seen in the growing trade deficits with our major trading partners. The one-by-one approach is not working in dealing with these major trading deficits.

One just needs to remember the Aluminum Bats dispute, where it took six years to reach an agreement with Japan over their unfair limitations on the importation of U.S.-made aluminum bats. A comprehensive approach is necessary, and that is what we believe the Riegle-Gephardt provisions are all about.

I would like to just emphasize that it does not require balanced bilateral trade. Indeed, it allows a country to export 75 percent more goods to the United States than it imports. It is only for countries above that level that it would require an annual 10 percent reduction in their trade surplus with the United States. It doesn't require the imposition of an import surcharge, because it provides the President with a wide range of alternatives: he may withdraw benefits denied from trade agreements; he may assess quantitative law restrictions; he may negotiate orderly marketing agreements; or he may take other administrative actions or propose legislation.

It does not tie the President's hands in negotiations. As a matter of fact, it enhances his ability to negotiate. And if circumstances warrant, the President may waive application of the provision. In fact, sanctions may never be utilized at all because of changes in exchange rates, acceptance of more U.S. exports, or that the negotiations themselves are acceptable and reduce the U.S. trade deficit or that the unfair trade practices are eliminated. It is just an insurance policy.

Let me just take a minute to talk about the need for worker rights provisions. Currently, those provisions are in certain parts of U.S. law and have been part of U.S. law historically going back to 1890 when the McKinley Tariff Act prohibited imports manufactured by convict labor.

The enactment of worker rights does not impose U.S. standards around the world. It just makes worker rights the same as other rights that are generally considered capital rights under the current law.

As we are currently negotiating in GATT for the inclusion of an intellectual property rights clause which would take the provisions of the international property rights organization and apply them. And where we already have in U.S. law the violation of copyright as being an unfair trade practice, so too we think that worker rights need to be included under the current law as an unfair practice, and needs also to be included into the negotiations—into the GATT negotiations currently going on in the Uruguay round.

Mr. Chairman, because of time, I emphasized these two items, because I think they are important elements in the comprehensive trade legislation that this committee, we believe, must bring forward in order to deal with the major trade deficit.

The CHAIRMAN. Thank you very much, Mr. Oswald. Our next witness, Mr. Frank Fenton, who is the cochairman of the Trade Reform Action Coalition. Would you proceed, sir?

[The prepared statement of Mr. Rudolph Oswald follows:]

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STATEMENT BY DR. RUDOLPH OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE COMMITTEE ON FINANCE, U.S. SENATE ON TRADE REFORM LEGISLATION

April 7, 1987

Mr. Chairman, members of the Committee, I appreciate this opportunity to present the views of the AFL-CIO on trade legislation currently being considered by the Congress. America's trade crisis, now the focal point of legislative activity, is evidence that the nation's massive trade deficit presents a clear and present danger to the domestic economy.

The figures are stark. U.S. trade deficits the last few years have been the largest ever recorded by any country and in 1986 reached $170 billion. This is more than four times higher than the 1980 level. For manufactured goods alone, America has gone from a surplus of $17 billion in 1980 to a deficit of $145 billion in 1986. In agriculture, the strong $23 billion surplus in 1980 was reduced to just $4 billion last year. Overall, imports into the U.S. increased 51 percent during this period while incredibly, U.S. exports dropped by 2 percent. Perhaps even more startling, 75 percent of America's massive trade imbalance in 1986 was accounted for by just six countries--Japan, Canada, Taiwan, West Germany, South Korea, and Italy.

No sector of the economy has been left unscathed. Mines are closing, manufacturing communities are devastated, and escalating numbers of farm families have been driven off their land. For the first time in our history, we have a generation of Americans who cannot reasonably expect to do as well as their parents did. The sharp decline of the U.S. international economic position, spurred by foreign government practices and the absence of a strong and predictable U.S. trade policy, has contributed significantly to their fate.

These realities make the work of this Committee truly urgent. The AFL-CIO urges the adoption of a comprehensive program to address this nation's trade problems and reduce the trade deficit. Such a comprehensive program must contain an effective mechanism to truly reduce the trade deficit. In addition, the AFL-CIO believes that worker rights must be incorporated into U.S. trade law. Changes in trade law that provide timely and predictable relief to workers and industries injured by imports and that address new foreign discriminatory commerical practices are features that long should have been incorporated into the Trade Act. Legislation is also required to deal with the problems of specific industries devastated by trade.

Trade Deficit Reduction

Central to any legislation that hopes to improve the U.S. trade position are measures that address head-on the problems of excessive and unwarranted bilateral trade surpluses. I want to commend Senator Riegle for identifying this area as a vital component of needed trade legislation. Adoption of his bill, S.499, the Trade Deficit Reduction and Market Access Act of 1987, together with its counterpart in the House, authored by Congressman Gephardt is essential if trade reform legislation is to have any meaning.

Trade is an area made for buzz words: "free trade," "fair trade," "negotiations," "retaliation," "mercantilism," and, of course, the latest addition, "competitiveness." But no word in the trade lexicon obscures an issue more thoroughly than "protectionism." The term "protectionism" is used for scapegoating--not for an analysis of the issues. S.499 and the amendment to be offered by Congressman Gephardt in the House have been labeled as "protectionist." One result of this unfortunate and incorrect labeling is that the media, Administration trade officials, and even some members of Congress feel little need to understand this most essential trade deficit reduction provision.

The Administration itself acknowledges that Japan, Germany, and Taiwan need to drastically increase their purchase of American products and reduce their trade surpluses. Negotiations to this end are going on continually. It is, at best, naive to believe that the nation's major trading partners will change their policies toward trade--policies that have been successful--simply because the U.S. asks them to do so. All too frequently, access to the U.S. market is viewed as a divine right, while restrictions on American exports are merely appropriate expressions of their national interest. It is clear that negotiations, without the prospect of some ultimate penalty fail. The U.S. has been negotiating with Japan for years and U.S. exports to that market are not substantially higher than they were six years ago. Germany to date has been unwilling to expand its economy or, for example, open its market to American telecommunication products. Taiwan asserts it needs special privileges because it's a developing country.

Currently unfair trade practices are investigated and negotiated about, and finally retaliated against one by one. As soon as one unfair practice is dealt with, another crops up and takes its place. The result is seen in growing trade deficits with major trading partners. The one-by-one case approach is not working in dealing with these major deficit countries. A comprehensive approach is necessary, and that is what the Riegle-Gephardt provisions are all about.

S.499 and the Gephardt Amendment add a new part to Section 301 of the Trade Act to deal in a comprehensive manner with countries that utilize unfair trade practices to maintain excessive trade surpluses with the United States. It is a recognition that the barrier-by-barrier, product-by-product approach to unfair trade practices has been unsuccessful. It involves a five-step procedure:

Step I: The International Trade Commission, in any year that the U.S. trade deficit exceeded 1.5 percent of GNP ($63 billion in 1986) would be required to make a determination as to whether any "major U.S. trading parnter" (countries with more than $7 billion in trade with U.S.) maintains an "excessive trade surplus" (ratio of U.S. imports to U.S. exports of 175 percent and a surplus of over $3 billion).

Step II: Within 30 days of this finding, the U.S. Trade Representative must determine whether any "excessive surplus" country maintains a pattern of unjustifiable, unreasonable, or discriminatory trade policies or practices that contribute to that surplus.

Step III: If this is determined, the country in question would be required to reduce its surplus 10 percent from the 1986 level by 1988; and a 10 percent reduction from the 1988 level by 1989, and so on. If a country ended its unfair trade practices or fell below any of the numerical standards noted above, the process would stop.

Step IV: Following the identification of a country, a negotiating period is provided in the hope of reaching an agreement that would eliminate the unfair trade practices or increase imports from the U.S., or limit exports to the U.S. that would achieve the surplus reduction goals.

Step V: If negotiations are unsuccessful, the President would be required to take action to achieve the surplus reduction goal. If necessary, this step would take place in 1989.

As under existing law, he may withdraw benefits denied from trade agreements, assess duties, impose quantitative restrictions, negotiate orderly marketing agreements, take administrative action or propose legislation.

The President may waive applications of this provision if he determines that a country has balance of payments problems or debt problems or if enforcement would cause substantial harm to the U.S. economy. These waivers, however, may be overturned by Congress on a "fast track" basis.

What separates S.499 from other legislative proposals is that it provides tangible and identifiable results. By so doing, it strengthens the hand of U.S. negotiators and provides the Congress and the American people with the ability to measure progess in reducing excessive trade surplus. The amendment provides ample negotiation time to eliminate unfair trade practices that are an essential condition for its implementation.

If major trading partners remove their unfair trade barriers and practices, there will be no retaliation under S.499. If they do not, the Congress would require the President beginning in 1989 to reduce their excess trade surpluses by 10 percent per year. Simply stated, S.499 is a Congressional mandate requiring Presidential action to meet legitimate and realistic trade deficit reduction goals.

It does not require balanced bilateral trade. Indeed it allows a country to export 75 percent more goods to the U.S. than it imports. For countries above that level, an annual 10 percent reduction in their trade surplus with the U.S. is hardly draconian. Further, it does not require the imposition of an import surcharge. The President is provided with a wide range of actions to utilize if they prove necessary. It does not tie the President's hands in making trade policy decisions. If circumstances warrant, the President may waive application of the provision. In fact, sanctions may not be utilized at all. If exchange rate shifts, acceptance of more U.S. exports, and negotiations prove successful in appropriately reducing the U.S. trade deficit or unfair trade practices are removed, no sanction would come into play. Looked at in this light, Senator Riegle's bill is merely an insurance policy, but one that we believe is absolutely essential.

The bill is the "stick in the closet" that U.S. trade policy so sorely lacks. It puts backbone and most importantly, predictability in a trade policy that has been notable mostly for bluster, negotiations, broken promises, press releases, and as a result, massive trade deficits. Given the present and future economic consequences of the U.S. trade deficit, the Congress should require specific and concrete goals for trade deficit reduction. S.499 accomplishes this in a prudent way. Though responsibly addressing the problem of both unfair trade practices and excessive surpluses, problems on which there are general agreement, trade deficit reduction provisions have garnered considerable criticism from many quarters, the Administration in particular, as being protectionist and a latter-day version of Smoot-Hawley. It is neither, and is the only reasonable and effective method of insuring that the trading system will survive.

Worker Rights and Trade

In addition to trade deficit reduction, the AFL-CIO believes that effective trade reform legislation must include provisions that make the denial of internationally recognized workers rights an actionable practice under U.S. trade law. S.498, introduced by Senator Riegle, would accomplish this needed reform.

Linking worker rights to international trade is not a new idea. Its roots stretch back into the nineteenth century in both Europe and the United States. The earliest congressional attention to the issue came in 1890, when the McKinley Tariff prohibited imports manufactured by convict labor.

In 1947, the drafters of the International Trade Organization recognized a common interest "in the achievement and maintenance of fair labor standards." The Havana statement founding the GATT also recognized worker concerns.

Since 1983, the U.S. government has applied a labor standard to four trade or investment laws: in 1983, to the Caribbean Basin Initiative; in 1984, to the Generalized System of Preferences; in 1985, to the Anti-Apartheid sanctions against South Africa and to the operations of the Overseas Private Investment Corporation.

Currently, U.S. trade remedy law and the General Agreement on Tariffs and Trade spell out rules against capital subsidies and dumping in order to promote fair competition. But there are no comparable safeguards against the violation of workers' rights. Anything goes. Now competition at any cost--as far as workers are concerned--is condoned in world trade.

Trade is not and should not be viewed as an end in itself. Fair competition in world trade should renounce labor repression. It should be structured by rule and in practice to improve living standards of workers as well as to benefit consumers and manufacturers.

The enactment of a worker rights provision would provide incentives for improving labor standards in developing countries and for safeguarding at least a minimum level of respect for worker rights. The U.S. cannot afford to tolerate a trading system that pits American workers in brutal competition with the lowest international common denominator of worker rights. In too many circumstances international trade can become an excuse for depressing working standards and denying worker rights. With decent labor standards, however, trade can help develop human resources and promote democratic economic development.

Ignoring foreign sweatshops costs American jobs and limits economic growth. The ability to sell in America, the world's greatest consumer market, is a powerful source of influence that ought to be used to spread the benefits of trade within countries as well as among them. It is just as true overseas as it is in America that extending to working people the tools with which to raise their standards of living creates demand. In trade this means more demand for American exports, which creates more American jobs.

The enactment of worker rights provisions as contained in S.499 do not impose U.S. labor standards on the rest of the trading world. Nor can they be construed as a minimum wage for the world. Rather, they prod trading nations to respect fundamental, internationally recognized worker rights adopted by representatives of workers, employers, and governments after long and careful debate in the International Labor Organization.

They are defined in S.499, as they are in GSP and OPIC, as the right of association; the right to organize and bargain collectively; the prohibition of use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

As has been the case with services and investment, the adoption of these provisions will strengthen the position of America's negotiators going into a new round multilateral trade negotiations. What is the sense of merely sending negotiators back to GATT with only general instructions on worker rights, when such instructions have been in U.S. law since 1974 without results. This past negotiating effort has failed, in large part, because other trading nations do not see credible evidence that the U.S. is serious enough on this issue to include it in its own trade law.

Finally, current trade law specifically defines three unreasonable and unfair trade practices--the denial of market access; the denial of the opportunity to establish a business in a foreign country; and the failure to protect copyrights, patents, and other intellectual property rights. The AFL-CIO believes that the denial of basic worker rights should be added to that list. Not doing so would clearly state to the trading world that the U.S. cares deeply about the counterfeiting of American-made videotape cassettes, but does not care, for example, about children being sold into slavery or forced into factory work 15 hours a day, seven days a week.

We believe that strengthening worker rights in relation to trade is, for America, far more important than the already established defense of rights of property or multinational capital.

For all these reasons, the AFL-CIO strongly supports S.498 and S.499, and urges their enactment.

STATEMENT OF FRANK FENTON, COCHAIRMAN, TRADE REFORM ACTION COALITION [TRAC] AND VICE PRESIDENT, INTERNATIONAL TRADE AND ECONOMICS, AMERICAN IRON & STEEL INSTITUTE, WASHINGTON, DC

Mr. **Fenton**. Thank you, Mr. Chairman. This testimony is being presented on behalf of the Trade Reform Action Coalition. TRAC, Mr. Chairman, is probably the largest private sector coalition ever formed to work for stronger U.S. trade laws. Founded almost 4 years ago, our member organizations employ over 5 million people and represent over $300 billion in annual sales. Industries represented in this coalition include automotive parts, chemicals, fiber/textiles/apparel, footwear, furniture, leather goods, metalworking, nonferrous metals, and steel and steel distribution.

TRAC believes that we are now at the most critical juncture ever in the history of our post-war international trade policy. At stake are the key elements in American leadership: our economic strength, and therefore our political and military strength; our living standards, which have been in decline and must now begin to rise again; and our technological strength, which is the key to raising living standards, and on which our world leadership rests.

Successive administrations over at least the last quarter of a century have followed a very strange mixture of trade policies. There has been blind faith in free trade, which may have existed in the Garden of Eden but has survived almost nowhere among today's political economies. There has been a naive belief in our ability to convert other governments to the ways of market-based economies, when the trend since World War II has been in precisely the opposite direction. And there has been a delusion that America's economic strength is inexhaustible and that economic concessions can be made for purely political reasons without draining that strength away over time.

The results of these trade policies are before us: we are now the world's largest debtor nation; we have a $170 billion trade deficit; and there has been massive damage to our country's manufacturing base. Only last week, the Bureau of Labor Statistics reported that during the more than 4 years of the current economic recovery, only about half of the 1.8 million durable goods manufacturing jobs that were lost during the recession have been regained.

Obviously, the Federal budget deficit and exchange rate swings are important factors in our international economic problems. But TRAC believes that the trade component of our overall economic policy must now be addressed as one of the first orders of business. We therefore applaud the introduction, by you, Mr. Chairman, and by Senator Danforth, of S. 490, the Omnibus Trade Act of 1987, Senator Heinz' introduction of trade legislation, and the major contributions to the debate made by Senators Moynihan, Mitchell, and others. And of course we greatly appreciate the fact that S. 490 already includes a number of TRAC-supported provisions.

Given the history of failure of previous U.S. trade policies, TRAC believes that this time we must have a national consensus on a national trade policy. We therefore very strongly support, as an essential first step, development of agreement between the administration and Congress on specific trade policy goals: an action plan, if you will, against which our trade negotiators' performance can be measured.

The proposal in S. 490 for a Statement on Trade Policy which Congress is to approve for fast-track authority, seems to us a thoroughly appropriate and desirable procedure. It will provide a bipartisan and truly national consensus on trade policy; it will provide negotiating leverage for the administration; and it will provide something that we have never had—predictability in our trade policy that our trade partners can understand.

TRAC believes that the trade policy goals the Administration should set should cover not only the promotion of U.S. exports, but strong defenses against unfair and disruptive trade practices in the U.S. market. It is in this context, and as one key element, that we urge improvements in U.S. trade laws.

It is equally important that the Congress set some limits on tariff-cutting authority for import-sensitive U.S. industries. This is needed, in our view, to ensure that the positive effects of trade law reform are not undercut by injurious tariff cuts.

On the specifics of trade law reform—the full details of which, Mr. Chairman, we have provided in written testimony to the committee—we particularly stress that U.S. dumping law must now address diversionary dumping; it must provide compensation to the victims of unfair trade; it must recognize that no U.S. trade law is being effectively applied to non-market economies, and that our subsidy law is not being applied to them at all. We must also recognize that the so-called escape clause, section 201, does not provide adequate relief, and it does not effectively promote industry adjustment.

The CHAIRMAN. Mr. Fenton, I must ask you to summarize.

Mr. FENTON. Yes sir. I think, Mr. Chairman, in view of the fact that we have supplied you full written testimony, I would cease at this point.

The CHAIRMAN. We will take it in its entirety.

[The prepared statement of Mr. Frank Fenton follows:]

STATEMENT OF FRANK FENTON

ON BEHALF OF THE

TRADE REFORM ACTION COALITION

The Trade Reform Action Coalition (TRAC) appreciates this opportunity to submit written testimony on trade and competitiveness legislation to the Senate Finance Committee.

TRAC is probably the largest private sector coalition ever formed for the purpose of promoting stronger U.S. trade laws. Founded some three and one-half years ago, TRAC includes member organizations that employ over 5 million people and represent well over $300 billion in annual sales (membership list attached). Industries represented include automotive parts, chemicals, fibers/textiles/apparel, footwear, furniture, leather goods, metalworking, non-ferrous metals, steel and steel distribution.

TRAC members believe that we are today at the most critical juncture ever in the postwar history of U.S. trade policy, and that the U.S. now requires the strongest possible trade bill if we are to reverse the long years of continuing decline in America's world trade position. At stake immediately are U.S. living standards and our economic strength as a nation. At stake ultimately are our political/military strength and the capacity for technological dynamism in our society.

Now that the United States has become the world's largest debtor nation, we think the time is past for "business as usual." In other words, we must drop our blind faith in free trade theory; we must drop our naive belief in our ability to convert other governments to the practice of market economics; we must stop making international trade concessions for perceived political or military gains; and we must start to defend U.S. economic interests every bit as vigorously as do our major foreign competitors.

We in TRAC believe that America's deepening trade crisis can only be resolved by looking at our trade competitiveness problem in its entirety. This means not only promoting U.S. exports by strengthening our export industries and opening up world markets, but also ensuring against unfair trade and market disruption in the world's largest and most open market -- the U.S. market. It is in this context that we urge substantial improvements to U.S. trade laws.

Our member organizations recognize that the record $170 billion U.S. trade deficit in 1986 cannot be reduced by changes in the trade laws alone, but it is essential to strengthen substantially U.S. trade statutes in any Congressional effort this year to restore America's international competitiveness. It is equally critical that the Congress set some limits on tariff-cutting authority for import-sensitive U.S. industries. This is needed to ensure that the positive effects of trade law reform are not undermined by injurious tariff cuts.

Of particular concern to TRAC is the massive damage caused to the domestic manufacturing base by the skyrocketing U.S. trade deficit. While the federal budget deficit is clearly part of the problem, so too are the increasingly important role played by foreign mercantilist trade policies; the overvalued U.S. dollar against the currencies of non-Japanese and European competitors; the general lack of coherence and predictability in U.S. trade policy; and the American tendency always to be "reasonable" (i.e., to yield too quickly and too generously) in trade negotiations with foreign competitors.

Because the causes of our record trade deficits are complex, TRAC members believe that no trade legislation can provide a total solution to our trade crisis. At the same time, mere tinkering with past approaches will not solve this crisis. We need redoubled defenses against unfair and disruptive trade -- because U.S. manufacturers can no longer afford to ignore the problem of inadequate trade laws and trade law enforcement.

In particular, we can no longer afford to ignore the fact that U.S. dumping law fails to address diversionary dumping and provides no compensation to the victims of unfair trade; that no U.S. trade law is being effectively applied to non-market economies and that our subsidy law is not being applied at all; that the U.S. "escape clause" (Section 201) neither provides adequate relief nor promotes industry adjustment; that our Section 232 is not addressing national security trade threats in a timely enough fashion; and that Section 301 is not being used effectively to deal with foreign industrial targeting and state-owned enterprises.

The Trade Reform Action Coalition is committed to the goal of correcting these and other trade law deficiencies as a necessary component of advancing U.S. international competitiveness. While we would urge that the Finance Committee go further in the direction of the strongest possible bill than it has so far in the Omnibus Trade Act of 1987 (S. 490), we commend Senators Bentsen and Danforth -- first, for recognizing that U.S. trade laws are in need of substantial reform, and second, for including in S. 490 a number of provisions strongly supported by TRAC.

It is especially important to TRAC that the Finance Committee has decided to include dumping and subsidy law (AD/CVD) reform -- and diversionary dumping in particular -- in this year's trade bill. These statutes are our main line of defense against unfair trade in the U.S. market, and they are potentially the most useful of all U.S. trade laws. Since many of the AD/CVD reforms supported by TRAC are included in S. 439 (sponsored by Senator Heinz), we are particularly grateful to Senator Heinz. We urge that the Committee include all of these provisions in S. 490, as well as an effective private right of action to enforce the dumping laws and S. 770 (application of CVD law to non-market economies, sponsored by Senator Glenn).

In addition to recommending that S. 490 include more in the way of dumping and subsidy law reform, we must mention two concerns we have in the way S. 490 treats Section 201 reform and trade negotiating authority. First, in the area of 201 reform, we support the concept of requiring that adjustment take place, but we strongly oppose giving the International Trade Commission the right to pick "winners and losers" through the provision of relief necessary for "the orderly transition of resources to other productive purposes" -- and we think very few industries would ever risk such a finding. Second, in the area of trade negotiating authority, we prefer the approach used in S. 490 to that contained in either S. 636 (Administration bill) or H.R. 3 (House bill), but we think there should be further safeguards on tariff-cutting authority for industries that are import--sensitive.

In the general area of trade policy, we strongly support all those in the Committee who see the need for closer Admininistration consultations with Congress on trade matters. This is vital if we are ever to develop a more effective and more predictable U.S. trade policy. In that regard, S. 490's requirement of an Administration "Statement on Trade Policy" acceptable to the Congress (in exchange for fast-track negotiating authority) seems to us to be a thoroughly appropriate procedure.

What we must set about working toward immediately is a national consensus on a national trade policy. Clearly, U.S. industries must bear the primary responsibility to improve their own competitiveness -- to reduce costs, increase productivity and improve product quality. However, government also has a key role -- to provide a consistent policy environment that allows for self-help efforts to succeed and to ensure that vital U.S. industries are not sacrificed on the altar of an economic theory not practiced by others.

We refer here not only to the academicians' pure free trade theory, but also to unrealistic notions of "competitiveness." It is preposterous to think that any U.S. industry will ever be able to compete against 15-cent an hour labor, regardless of how lean and mean it gets and how technologically advanced its equipment. It is time instead to look at competitiveness in a broader context, one that recognizes that: (1) key U.S. manufacturing industries are worth saving; and (2) foreign mercantilism and unfair trade practices cannot be allowed to destroy our manufacturing base.

It is also time to look more carefully at what the U.S.trade deficit is composed of and stop pretending that this deficit can ever be eliminated by the promises of foreign governments to open up their markets to U.S. exports.

The only way for the Congress to deal seriously with our trade crisis is to address both the export and import sides of the ledger simultaneously.

The Senate Finance Committee is to be commended for trying to develop a bill that, in Chairman Bentsen's words, is "tough but fair." TRAC, for its part, is committed to working closely with the Committee to achieve such trade legislation this session. What follows is a summary version of TRAC's 1987 legislative priorities. We thank the Committee for considering these recommendations as it moves to mark-up on S.490.

TRAC's Proposals for Omnibus Trade Legislation[1/]

To restore U.S. international competitiveness, eliminate our massive trade deficits and revitalize the U.S. manufacturing base, we need to correct the many flaws in Sections 201 (injury) and 301 (unfair trade practices) of the Trade Act of 1974; insert strict time lines in Section 232 (national security) of the Trade Expansion Act of 1962; and limit tariff-cutting authority with respect to import-sensitive products. Yet, if American industry is to be competitive in the U.S. market, it must also have effective tools to deal with the market distortions caused by dumped and subsidized imports. Without fair trade in the U.S. market, we will not be able to solve our "big picture" trade problem. Therefore, the omnibus trade bill that passes the Senate this year must include key dumping and subsidy law changes.

I. Dumping and Subsidy Law Issues

1. DIVERSION. This problem occurs when dumped or subsidized products are used as raw materials or components in so-called "downstream" products. Two areas of primary concern relate to "diversionary dumping" (addressed in H.R. 3, S. 439 and S. 490) and "upstream subsidies" (addressed in S. 439). Examples of "diversionary dumping" occur if Peruvian yarn, subject to a dumping finding, is incorporated into sweaters (from Peru or elsewhere) that are sold in the United States; or if dumped French steel, subject to a quota Arrangement, is incorporated into British machinery that is then exported to the U.S. An example of "upstream subsidies" occurs when subsidized Brazilian steel is incorporated into a Brazilian farm implement that is sold in the United States. Current practice, however, is not to extend the upstream subsidy law across national boundaries, e.g., when subsidized French or Italian steel is used in a German machine tool that is sold in the United States.

   Solution: Legislation to:

   - provide the right to redress the injury that occurs when imported products contain dumped components (at present, only subsidized components are partially covered by U.S. trade law.);
   - permit the International Trade Commission to monitor and, if warranted, the Commerce Department to investigate imports of products that contain components or raw materials subject to (a) large antidumping or subsidy duties or (b) a quota arrangement;
   - enlarge the third-country application of current upstream subsidy law from subsidies paid by a customs union to subsidies paid or authorized by a customs union or its members; and
   - address the unfair trade practice that occurs when foreign producers charge one price for raw materials used in products consumed domestically, and another (lower) price for raw materials used in products that are exported.

[1/] While not all TRAC-related groups agree necessarily with each detail of every proposal, all support the basic thrust of TRAC's recommendations. In addition, many TRAC-related groups support other generic trade law reform proposals not specifically addressed by TRAC (e.g., strengthening U.S. protection of intellectual property rights).

2. INJURY DETERMINATIONS.[2] The International Trade Commission (ITC) is required to follow the statutory guidelines set down by Congress in determining whether there has been material injury to a domestic industry. Recently, however, some Commissioners have used extraneous factors in determining injury. These have no basis in law and flout Congressional intent. Another key problem is "cumulation." The 1984 Trade and Tariff Act allowed for cumulation, the combining of unfairly traded (dumped and subsidized) imports from several countries to determine if, in aggregate, they injure a domestic industry and thus require remedies to offset the unfair trade practices. However, as recognized in H.R. 3[3] and S. 439, the ITC has tended to interpret this provision more restrictively than Congress intended. The result has been denial of relief to industries injured by unfairly traded imports.

   Solution: Legislation to:

   - preclude the ITC from looking at extraneous factors such as predatory pricing and margin analysis; require the ITC to take into account the conditions of competition in the exporting country (e.g., closed home market); and require the ITC to explain its analysis of each factor it considers, when determining whether material injury to a domestic industry has occurred.

   - require the ITC to assess the combined impact of unfairly traded imports on a domestic industry. Such imports would be combined whether dumped or subsidized; irrespective of their geographic distribution in the U.S.; whether or not they are from countries that have signed the GATT Subsidies Code; and whether they are under investigation, are covered by quantitative restraint (QR) Arrangements or by recent (within 12 month) orders or suspension agreements that do not involve QRs. In addition, cumulation would be mandatory in threat of material injury determinations.

3. PRIVATE DAMAGES. As recognized in H.R. 3 as introduced and in S. 361, if a domestic producer is injured by dumping, it currently has no effective private damages remedy to compensate it fully for the injury that has occurred. Current law only provides relief for injury from future imports, which is not a sufficient deterrent to predatory dumping. Also, as recognized in S.361, current law provides no opportunity to recover for customs violations, including fraud.

Solution: Legislation to create effective damages remedies that would permit domestic producers to receive compensation for the full extent of injury caused by dumping and customs fraud.

4. SUBSIDIES CODE COMMITMENTS: In the past, when the U.S. has accepted commitments by foreign governments to eliminate subsidies (and the U.S. has granted the benefit of an "injury test"), there have been instances where such commitments either have not been honored or have been ineffective.

   Solution: Legislation that would essentially codify existing Administration practice by requiring both strong foreign government subsidy commitments and full compliance. This would ensure that all bilateral subsidies agreements include at least the elements of:

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[2] A third issue related to injury determinations -- involving products where price is the predominant market factor -- is dealt with under "miscellaneous amendments."

[3] One aspect of H.R. 3 that TRAC strongly opposes, however, is the idea of exempting "negligible imports" from the cumulation process. This runs directly contrary to the logic of cumulation and would potentially gut the cumulation provision passed in 1984.

- phase out -- the commitment to eliminate all export subsidies in a specified period of time;
- standstill -- the commitment not to increase or add new export subsidies; and
- provisional application -- the understanding that the injury test will be revoked following violation of the agreement.

5. DEFINITION OF SUBSIDY. Under current law, duties to offset domestic subsidies provided by foreign governments can only be applied against loans that are inconsistent with commercial considerations and against the provision of goods or services on preferential terms.

   Solution: As recognized in H.R. 3 and S. 439, it should be possible to apply offsetting duties against subsidized imports, whether they have benefited from loans that are inconsistent with commercial considerations or from loans made on preferential terms; likewise, countervailing duties should apply not only against goods or services provided on favorable terms, but also against goods or services that are offered on terms inconsistent with commercial considerations.

6. NON-MARKET ECONOMY (NME) IMPORTS. Present dumping law procedure against non-market economies is too unpredictable; present countervailing duty law has been interpreted as not applying to imports from non-market economies; and Section 406 (NME market disruption) has been a totally ineffective statute.

   Solution: Amendments to:

   - provide, in NME dumping cases, for an artificial pricing benchmark (the weighted average of free market producer prices including U.S. producers) and an alternative approach (at petitioner's request) using factors of production;
   - clarify explicitly in U.S. subsidy law that it applies to all countries, i.e., that non-market economy countries can and do subsidize their exports to the U.S.; and
   - improve Section 406 (as a complement, not replacement, for other NME import remedies) by (1) reducing the injury causation standard (to "increasing" imports that are an "important" cause of injury); (2) reducing discretion; and (3) transferring decision-making authority from the President to USTR.

MISCELLANEOUS AMENDMENTS. A number of additional problems continue to reduce the effectiveness of these laws.

Solution: Legislation to:

- ensure that the Commerce Department does not use improper adjustments when calculating dumping margins;
- clarify that the U.S. government is not exempt from paying penalty duties when it imports dumped and subsidized products;
- create a better way for determining injury in cases involving products where price (not product differentiation) is the most important market factor; and
- permit recovery of attorney/consultant fees in successful trade cases.

II. Section 201 Escape Clause Issues

Section 201, the so-called "escape clause", has not been effective to provide relief or to promote adjustment.

Solution: Amendments to:

- reduce the injury causation standard from "substantial cause" to "cause";
- clarify that the term "cause" does not exclude relief in situations where other factors contribute significantly to injury;
- require that industry adjustment (not phase-out) take place, but limit the ability of the President to disregard the recommendations of the ITC for relief;
- strike the language in current law that urges that import relief after three years be phased down "to the extent feasible";
- give the President authority to increase (as well as reduce) the level of relief to recipient industries; and
- ensure that any additional Presidential relief options -- such as unfair trade filings, antitrust exemptions or multilateral negotiations -- supplement, and not replace, existing 201 remedies unless requested by the petitioner.

III. Section 232 (National Security Trade Case) Issues

Section 232 currently lacks any requirement that the President make a decision within a specified period of time. This discourages Section 232 petitions and is potentially harmful to U.S. national security.

Solution: Legislation to impose a strict time deadline on Presidential responses in Section 232 cases following an affirmative decision by the Secretary of Commerce.

IV. Section 301 Issues

Section 301 has historically failed to address promptly foreign government acts, policies and practices that are unreasonable, discriminatory or burdensome to U.S. commerce.

Solution: Amendments to:

- clarify that Section 301 applies to state enterprises that sell goods and services on terms inconsistent with commercial considerations;
- establish a separate track for foreign industrial targeting;
- make the toleration by foreign governments of systematic anti-competitive activities by private firms (e.g.,cartels) an actionable offense;
- permit disclosure of confidential business information under administrative protective orders; and
- require USTR to send out questionnaires to foreign governments and verify all information received.

V. Tariff-Cutting Authority

U.S. manufacturing industries are today much worse off than they were before the last round of multilateral trade negotiations (the Tokyo

Round), which concluded in 1979. Nevertheless, the U.S. is now embarked on a major new round of trade negotiations, where it is expected that the price to be paid for opening up developing country markets to U.S. exports, services and investments will be further U.S. tariff cuts on manufactured goods.

> Solution: Legislation that would allow the President to enter into a new trade round with authority to negotiate tariff reductions, but language that would limit the scope of such authority to those products currently eligible for duty-free treatment under the Generalized System of Preferences (GSP). This would ensure that tariff-cutting authority does no further damage to import-sensitive U.S. manufacturing industries. In addition, because there are probably many products currently eligible for GSP that are also import-sensitive, there should be strict limits set on tariff cuts for these products as well.

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Trade Policy and Competitiveness Issues

The U.S. can no longer afford to treat trade and competitiveness policy as disconnected from other vital policy concerns, because our deepening trade crisis is a threat to U.S. national security as well as to our standard of living. Because this crisis has hit our manufacturing sector the hardest, we need to state clearly that, if America is to be a world-class economic power well into the 21st century, we cannot be simply a service economy. While TRAC, at this time, is not making specific legislative proposals in the area of trade and competitiveness policy, we think it is critical that the Congress deal with the following:

- The eroding U.S. manufacturing base;
- The central role of the U.S. manufacturing trade deficit in our overall trade deficit;
- The need to preserve vital U.S. industries, not debate "free trade" versus "protectionism";
- The fact that U.S. trade deficits are comprised of two parts -- sluggish U.S. exports and rapidly rising U.S. imports;
- The exchange rate imbalance that continues with key U.S. trading competitors outside of Western Europe and Japan;
- The size of the federal budget deficit and its relationship to the U.S. trade deficit;
- The ability of the U.S. Customs service to enforce its rules and regulations;
- The need to review in a comprehensive way U.S. laws, policies and procedures in regard to foreign trade zones and subzones;
- The impact on our international competitiveness of U.S. tax laws, anti-trust rules and environmental regulations;
- The unnecessary controls that continue to limit U.S. export opportunities;
- The fact that the world in 1987 (with pervasive state ownership, control and financing of industry) is very different from what it was in 1947 when the GATT was founded; and
- The probability that the Uruguay Round of new GATT negotiations will not be a panacea for our growing trade crisis.

TRADE REFORM ACTION COALITION (TRAC)

Alliance of Metalworking Industries
Amalgamated Clothing and Textile Workers Union
American Apparel Manufacturers Association
American Brush Manufacturers Association
American Chain Association
American Cutlery Manufacturers Association
American Die Casting Institute
American Federation of Fisherman
American Fiber, Textile, Apparel Coalition
American Furniture Manufacturers Association
American Gear Manufacturers Association
American Institute of Steel Construction, Inc.
American Iron and Steel Institute
American Metal Stamping Association (Washer Division)
American Mushroom Institute
American Pipe Fittings Association
American Textile Machinery Association
American Textile Manufacturers Institute
American Wire Producers Association
American Yarn Spinners Association
Anti-Friction Bearing Manufacturers Association
Automotive Service Industry Association
Association of Die Shops International
Association of Steel Distributors
Association of Synthetic Yarn Manufacturers
Bicycle Manufacturers Association of America, Inc.
Brass and Bronze Ingot Institute
Carpet and Rug Institute
Cast Iron Soil Pipe Institute
Cast Metals Association
Clothing Manufacturers Association of America
Committee on Pipe and Tube Imports
Copper and Brass Fabricators Council, Inc.
Cutting Tool Manufacturers Association
Expanded Metal Manufacturers Association
Footwear Industries of America, Inc.
Forging Industry Association
Group of 33
Hand Tools Institute
Industrial Fasteners Institute
Industrial Perforators Association, Inc.
Industrial Unions Department, AFL-CIO
International Ladies' Garment Workers Union
International Leather Goods, Plastics and Novelty Workers Union
Investment Casting Institute
Iron Castings Society
Knitted Textile Association
Lead-Zinc Producers Committee
Luggage and Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association, Inc.
Metal Cutting Tool Institute
Metal Treating Institute
Metalworking Trade Coalition
National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Association of Pattern Manufacturers
National Association of Uniform Manufacturers
National Cotton Council of America
National Foundry Association
National Knitwear Manufacturers Association
National Knitwear and Sportswear Association
National Tooling and Machining Association
National Wool Growers Association
Neckwear Association of America
Non-Ferrous Founders' Society
Northern Textile Association
Outdoor Power Equipment Institute
Plumbing Manufacturers Institute
Scale Manufacturers Association, Inc.
Steel Founders' Society
Steel Plate Fabricators Association, Inc.
Steel Service Center Institute
Synthetic Organic Chemical Manufacturers Association
Textile Distributors Association, Inc.
Tool and Die Institute
U.S. Battery Trade Council
U.S. Fastener Manufacturing Group
Valve Manufacturers Association
Welded Steel Tube Institute
Work Glove Manufacturers Association

The CHAIRMAN. Let me say that the order of arrival of the Senators for the purpose of questioning is: Moynihan, Packwood, Riegle, Rockefeller, Danforth, and Bradley.

Mr. Oliver, I really think you made an amazing statement: "Our trade deficit is therefore a reflection of our economic strength, rather than an evidence of weakness." I thought Don Regan had gone home. [Laughter.]

The CHAIRMAN. That is the kind of statement that he used to make about the high dollar as a sign of the strength of America, and we should not do anything to change it.

The problem we have here is that most economists tell us that the trade deficit cut our GNP by 40 percent. They tell us that by the early 1990's we will owe foreigners over $1 trillion in debt. That capital is not being invested just in productive capacity in this country. Much of it is because of the consumer binge that we have been unable to satisfy with domestic production. We are lucky the Japanese are buying our short-term securities. But they expect to be paid back. That burden is for us and for our kids. I think it is important to recognize what the trade deficit is and to try to turn it around.

I think it is important that we keep our people in manufacturing jobs and be competitive and productive. It is a many-facted problem. Competitiveness is part of it. Not doing enough in this country is part of it. Closed markets abroad are part of it.

What we want to do with this piece of legislation is to open up world trade. The entire world prospered by the growth of trade through the 1970's. We have seen it go flat in the 1980's. If it wasn't for the deficit in this country, it would be down by 75 percent.

You referred to the mandatory retaliation provisions under section 301. I think countries that make agreements ought to live up to them. And I think the assurance of retaliation when they violate those agreements is an incentive for them to live up to them. They must understand that we are serious about the agreements.

I see Senator Bradley here. You recall his comments at a recent hearing. [Laughter.]

The CHAIRMAN. He said why wouldn't you maximize efficiency if a country knew there would be mandatory retaliation. You then would not have lengthy delays in the political process. Now, Mr. Oliver, would you comment on that. [Laughter.]

Mr. OLIVER. Senator, let me make a few comments and I will make any other comments you would like on what you have said and what some of the points are.

My understanding is that American manufacturing is not, that we are not in the process of deindustrializing, that our manufacturing industry is strong, as my prepared testimony states.

The CHAIRMAN. I didn't say the United States was deindustrializing, but go ahead.

Mr. OLIVER. But, I would say in addition to that, that while I think it is important that we in America remain competitive, it isn't necessarily true that we continue to manufacture everything that we may have manufactured in the past. God didn't make America to manufacture everything that it manufactured in the past. And if it turns out that other countries can make, for example, portable typewriters more cheaply than America can, then it seems to me the consumers of America should have the chance to buy a cheaper, and from looking at the typewriters in front of us, smaller if they want, typewriters, rather than having to buy typewriters manufactured in the State of New York, which is where I was born and grew up.

I look at this from a consumer point of view, and it does seem to me that consumers benefit from having cheaper products, whether they have manufactured them here or not.

The CHAIRMAN. World trade, open trade, and not closed markets to our products or to their products. That is what we ought to be pushing toward.

Mr. OLIVER. I am in favor of world trade, definitely, Senator.

The CHAIRMAN. Let me say, because my time is expiring, Mr. Oliver, I think we have to take another look at workers rights, and I am sure we will on this committee as we follow the course of this legislation.

Senator Moynihan is here.

Senator MOYNIHAN. Thank you, Mr. Chairman. I would like to join with you in your sentiments and not, in any way, be unfriendly to the chairman, Mr. Oliver. But, haven't we been going through too many situations such as with these two typewriters. There is a firm that operates about 30 miles from where I live—they produced the first electrical typewriters—and they have managed to do it very well.

But they are faced with unfair competition—the Japanese put a $2 chip in their machines to circumvent antidumping duties.

There are going to be consequences, and our trading partners are going to have to learn what they are. That is why Senator Chafee and I have sponsored the section 301 provisions of S. 490.

Mr. Fenton, what in your judgment have we, as it were in this committee, done wrong? I mean, of our past trade policies, what has done the most damage to American industry as you would judge it to the degree you can point to policies that have caused damage?

Mr. FENTON. I would say, Senator, that the single factor of modern international life that American trade policy has totally failed to grasp, has been the progressive and persistent growth of government management and government intervention in foreign economies. It has happened on the largest scale with the most important basic industries: steel, mining, and other basic industries.

And the takeover essentially by foreign governments—not necessarily the ownership—but the management of those industries, has created trade problems which no Administration, seemingly, and no provisions have been able effectively to address.

Senator MOYNIHAN. Are you basically saying that the policies that assume a market won't work in situations where the economic outcomes are negotiated and planned?

Mr. FENTON. Precisely. You cannot try to run a market economy in the United States, when all the rest of your trading partners—at least in the key industries that we are concerned with here—are essentially government managed and are fenced off.

Senator MOYNIHAN. This is not a category that applies to assertively non-market economies. Mr. Oswald observed that 75 percent of our trade deficit is accounted by Japan, Canada, Taiwan, West Germany, South Korea, and Italy. All of these are very close to or are market economies, and yet your concern applies to them as well.

Mr. FENTON. I think my assertion, Senator, is that they may look like market economies, but in respect to the ownership and conduct of the business of some of these basic industries—steel being the one I know best—they are not market economies.

Senator MOYNIHAN. They are not.

Mr. FENTON. It is possible, in terms of particular industrial sectors, to operate as a non-market economy. I would say that has been the case for all of those industries in Europe, which are run by many of their governments, and by the Japanese. And we cannot treat them as if they were market economy industries.

Senator MOYNIHAN. To be viably a market economy and not conduct your day.

Mr. FENTON. Yes. It was assumed they were when the GATT was written in 1948.

Senator MOYNIHAN. And most of them probably were in 1948.

Mr. FENTON. And they probably were. But there has been a process of mutation in the last 40 years.

Senator MOYNIHAN. One further question, then, which this committee has to think about, and we do. The dollar has, we clearly would put it, soared in the early 1980's at a great disadvantage to U.S. trade. Now it is coming down. Quite seriously, won't that resolve a great many problems, or do you think not?

Mr. FENTON. I don't think so, Senator.

Senator MOYNIHAN. Why?

Mr. FENTON. I think there is too little predictability. The forces that affect exchange rates are so unpredictable, I cannot see how relying simply on the falling cheap dollar will solve our trade problems.

Senator MOYNIHAN. You would suggest the averages have come down, and can go up again.

Mr. FENTON. Indeed. You, yourself, have pointed out that one of our problems is foreign management of currencies, like the Korean won and the Taiwanese currency. This is not, in fact, a market economy with respect to exchange rates either.

Senator MOYNIHAN. One of the things we trade are currencies today.

Mr. FENTON. Precisely.

Senator MOYNIHAN. And governments very much control currencies in some of these countries.

Mr. FENTON. Indeed.

Senator MOYNIHAN. I am sure that is a new element in the whole trade world—the management of exchange rates—as a government practice with respect to trade.

I thank you, Mr. Fenton. Thank you all very much.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Fenton, let me follow up in response to Senator Moynihan's question. You said the biggest change had been the government management of industries overseas. Am I concluding from that that you are suggesting that the government management is more efficient than our market management?

Mr. **Fenton**. No, quite the reverse. Let me take the case of the Japanese steel industry. In the building up after World War II of the Japanese steel industry, government management channeled funds on a preferential basis to the Japanese steel producers, and they ended by grossly overbuilding the Japanese steel industry, which now has something in the order of 50 or 60 million tons of surplus capacity. Those acts of management by the Japanese Government were not in the interest of the Japanese taxpayer. I would not recommend that as a model for us at all.

Senator **Packwood**. Then I'm not quite sure what your answer was concluding your response to Senator Moynihan. Maybe I misunderstood the question or the answer. This has been a major factor—the government management. But in the one you have decided, apparently it is not a serious problem for the United States.

Mr. **Fenton**. The problem is the trade problem, Senator. Having overbuilt their industry, and having an effective fencing off of their own market, they channeled all of the surplus production, typically at incremental prices, to the U.S. market, and dumped that steel to the great detriment of domestic steel producers.

Senator **Packwood**. All right.

It is not just the management, it is the willingness to dump money into it at a loss, and to subsidize it at a loss. In that case, we could just as easily do that to industries in a market economy as we could in a managed economy. If we wanted to dump steel overseas, we could have it produced by our market companies and then subsidize the overseas dumping of it.

Mr. **Fenton**. If you could enter those markets.

Senator **Packwood**. Yes, I understand. It is not as much the government management of it as it is the willingness to commit funds, even at a loss, if necessary.

Mr. **Fenton**. Precisely.

Senator **Packwood**. All right. Now let me ask Mr. Oliver a couple of questions, and I want to see if Mr. Oswald agrees with his figures.

Mr. Oliver, you say on page 4 of your statement, "Manufacturing output is at an all time peak." Is that correct?

Mr. **Oliver**. I believe so, Senator.

Senator **Packwood**. Do you agree with that, Mr. Oswald?

Mr. **Oswald**. The output in certain industry sectors is at a peak, while in many other manufacturing sectors they are substantially lower from where they were 5 years ago, or 7 years ago.

Senator **Packwood**. You are just speaking generically of the entire manufacturing sector, I think.

Mr. **Oswald**. The general sector total output is at an all time peak.

Senator **Packwood**. All right. Second, manufacturing productivity grew at an annual rate of 3.8 percent between 1981 and 1986. Do you agree with that, Mr. Oswald?

Mr. **Oswald**. Yes sir. I believe that number is correct.

Senator **Packwood**. As opposed to 1.5 percent between 1973 and 1981, and 2.6 percent on average between 1948 and 1986. Do those sound correct to you?

Mr. **Oswald**. The numbers sound correct. I would not use, necessarily, those beginning and ending points.

Senator PACKWOOD. All right, but they are roughly correct.

Mr. OSWALD. But they are roughly correct.

Senator PACKWOOD. Now, let's talk about employment—Mr. Oliver's statement doesn't have the employment figures—but I am trying to remember. Employment in manufacturing——

Mr. OSWALD. In my statement, I had indicated that it is down by 2 million.

Senator PACKWOOD. From 1979.

Mr. OSWALD. From 1979.

Senator PACKWOOD. Right, which was our high year.

Mr. OSWALD. Which was our high year.

Senator PACKWOOD. But by and large, manufacturing employment total is not far off of where it was 30 years ago, is it?

Mr. OSWALD. Total employment would be up from 30 years ago, but is a much smaller percentage of total employment.

Senator PACKWOOD. Right. Now, that is because of the growth of the service sector and the jobs in other areas. Manufacturing has roughly help its own in employment, roughly, but tremendous growth accured in the service sector.

Mr. OSWALD. But there have been studies by the Commerce Department that have indicated that our trade deficit last year accounted for the loss of approximately 2½ million jobs directly. There is a rough rule of thumb that the Commerce Department views as far as exports—and that is that every $1 billion of exports calls for something like 22,000 to 25,000 jobs. On that basis, $170 billion trade deficit, or $145 billion in manufactured goods, because I think it applies better on manufacturing, would account for a job loss of—over 4 million jobs—in terms of the level of that trade deficit.

Senator PACKWOOD. Now Japan has immense trade surpluses; Germany has trade surpluses. In reference to the same period of time we are talking about, has their manufacturing employment gone up or down?

Mr. OSWALD. I think it has remained relatively stable or a very slight decrease—nowhere near the size of the decrease in the United States.

Senator PACKWOOD. I thought we had just agreed that manufacturing employment was about the same over the 30 years.

Mr. OSWALD. No.

Senator PACKWOOD. I realize it is down from 1979, but over a longer period of time, it is about where it was 25 years ago, as I recall.

Mr. OSWALD. Well, 25 years ago is a long period of time and output has increased substantially. That even goes back prior to the 1975 recession. U.S. employment is below the 1973 levels in manufacturing. The impact has been largely, with the increased output that Mr. Oliver talked about, one would expect employment to be up substantially. The reason it is not up substantially is essentially because of trade. Part of the reason that it has not been up more has been the productivity that you talked about, but it has been the trade impact that has caused the decline from where it would be otherwise.

Senator PACKWOOD. Mr. Chairman, my time is up. I will just conclude with a statement. What I have discovered, finally, after getting my research completed, is that neither Japan nor Germany have done any better in manufacturing employment. It has declined as a percentage of their total employment. Even though they are running trade surpluses and exporting manufacturing goods, their manufacturing sector is not growing. It may or may not be attributed to trade surpluses or trade deficits or imports or exports. But, whatever it is, what is happening in the United States has been mirrored in Japan, in Germany, and other industrialized countries.

The CHAIRMAN. Thank you, Senator Packwood.

Once again, the sequence of arrival is Moynihan, Packwood, Riegle, Rockefeller, Danforth, Bradley, and Daschle. Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman. First of all, Mr. Oswald, I want to thank you particularly for your statement today, which I think is very helpful to us. And I would ask to include in the context of my comments a summary that you gave us on S. 499, the deficit reduction provision that I am offering, which tracks with the Gephardt provision in the House. I thought your description was particularly useful. I would also ask that a statement along the same lines made by former Secretary of State Henry Kissinger, made in an op ed feature in the Washington Post in October of 1985 along these same lines, which I think particularly the Senator from New York would find interesting.

[The information follows:]

The Washington Post
Oct. 8, 1985, p. A 19

Henry Kissinger

The Specter of Protection

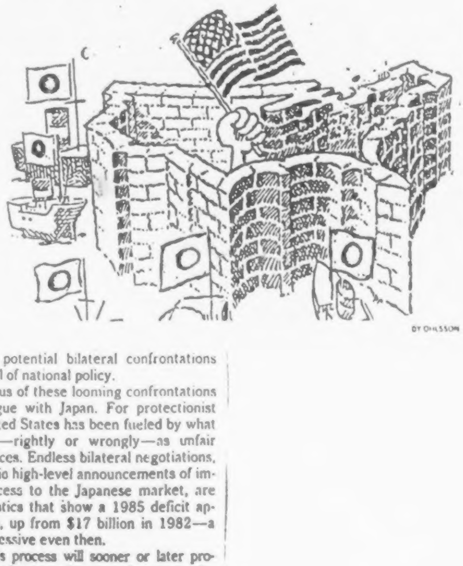
Why we must reach an accord with Japan.

Protectionism is clearly on the rise in the United States and elsewhere. The economic consequences of protectionism are complex and esoteric. But the political consequences are unambiguous. Protectionism will produce despair in the developing countries that will destroy their hopes for progress and make their debt problems unmanageable. Relations between the industrial democracies will deteriorate. Japanese-American relations, now the cornerstone of Pacific stability, will become confrontational.

Free traders assume that markets are infinitely flexible, that resources can be shifted easily from inefficient sectors and that new export industries will quickly replace failures caused by foreign competition. But the real political world does not obey econometric models. Because of the cost of investment, new industries do not emerge rapidly; lost jobs are lost permanently. The democratic process—and ultimately national security considerations—will not permit such a process of deindustrialization to continue much longer. Even President Reagan, committed as he is to free trade, has felt obliged to threaten economic retaliation, if only to forestall far more drastic congressional protectionist action.

Ultimately the solution must be found in global multilateral negotiation on exchange rates and trade. The present system of massively fluctuating exchange rates enables countries to manipulate their currencies to promote their exports; a negotiation on greater currency stability is implied by the recent meeting of finance ministers which devalued the dollar. Similarly, the U.S. proposals for new multilateral trade negotiations may be the last chance to preserve free trade. And in the final analysis the United States will not be competitive until it puts its own house in order—especially by reducing its deficits.

These negotiations cannot be concluded rapidly. Until then the containment of potential bilateral confrontations must be a crucial goal of national policy.



BY OHLSSON

The most dangerous of these looming confrontations is the parlous dialogue with Japan. For protectionist sentiment in the United States has been fueled by what is widely perceived—rightly or wrongly—as unfair Japanese trade practices. Endless bilateral negotiations, punctuated by periodic high-level announcements of improved American access to the Japanese market, are belied by trade statistics that show a 1985 deficit approaching $50 billion, up from $17 billion in 1982—a figure considered excessive even then.

Frustration with this process will sooner or later produce countermeasures that may do grave damage to the U.S.'s vital political interest in close relations with Japan.

There is indeed a telling political argument for tolerating a certain imbalance of trade. But that tolerance cannot go beyond the limits of the American domestic political process, especially as the current method to reduce the trade deficit is bound to fail. Americans tend to assume that the normal political evolution is toward the American pattern of government. That nations are shaped by their culture, their history, even their folk tales, that therefore their margin of change is finite, is not a view readily accepted by most Americans, even their leaders. Japan became a democracy in August 1945, but surface similarities obscure vast differences in practice.

Japan has combined popular elections at regular intervals with essential elements of its feudal past. Since no party other than the Liberal Democratic Party has ever won an election—or has a prospect for doing so—the political course of Japan is determined less by the electoral process than by so-called "factions" within the Liberal Democratic Party permanently led by a small number of senior statesmen. Each controls a group of members of parliament who follow their leaders' direction nearly automatically. The prime minister emerges from a complicated negotiation between factions that takes place every two years; in practice he can be renominated only once. Japanese Cabinet ministers cannot be dismissed by the prime minister unless their faction agrees, nor can they be ordered to carry out measures their faction is determined to block.

Thus modern-day Japanese leaders march to drummers radically different from our own. Japanese abhor personal confrontation or formal procedures that impose decisions by executive fiat. A course of action emerges from a long process of consultation with no apparent winners or losers. High office in Japan does not entitle the holder to issue orders; it gives the privilege of taking the lead in persuasion. A Japanese prime minister is the custodian of the national consensus, not the creator of it.

Japanese negotiators have no authority to settle without the approval of their factions and the consensus of their colleagues. When they encounter American negotiators seeking to sway them as individuals through the insistent reiteration of arguments, they take refuge in evasion, or, if pressed to the wall, they will promise what they cannot implement, hoping that some turn of events will come to the rescue. (Of course some of this is also a deliberate strategy of wearing out American negotiators.)

Therefore, the American approach of picking individual items or sectors for restraint of Japanese exports or access to the Japanese market cannot succeed. After the damage is apparent, it is too late to affect Japanese decisions. The very qualities that give such impetus to Japanese economic performance—the extraordinary ability to define and execute national priorities—produces stubborn resistance to any piecemeal attempt to modify the carefully crafted consensus. The best moment to influence Japanese decisions is before the consensus is formed—at a point when the American pragmatic approach rarely recognizes that a problem exists.

It is no accident that encounters between American presidents and Japanese prime ministers have so frequently ended in frustration. The American president asks for a decision—that is, an act of will to be imposed upon reluctant colleagues. Few Japanese prime ministers have had that much authority. Hence their promise to open Japan to American goods is a commitment to persuade, not to command. Until Japanese leadership groups decide that there is no alternative to a more equitable trading relationship, the promise cannot be implemented in practice. For the momentum and single-mindedness produced by the consensus process is purchased at the price of imperviousness to the sensibilities and often the views of foreigners.

Japan and the United States are on a collision course even while protesting the importance of their friendship. What makes the state of affairs particularly ironic is that if the United States had its way on all the issues it has raised—a highly improbable contingency—it would improve the balance of trade by, at most, some $10 billion to $15 billion. The United States paradoxically is asking too insistently for too little at the wrong moment in the Japanese process of forming a consensus.

Japan, on the other hand, cannot go on hiding behind its opaque decision-making process. The strategy of wearing America down will sooner or later make major retaliation inevitable. It is at this point essentially irrelevant which view is correct, the Japanese ascribing the trade imbalance to superior efficiency or the growing American resentment of alleged Japanese governmental manipulation. No nation will permit another to deindustrialize it without seeking to arrest the process.

A way out of this looming confrontation must be found if the long-term cooperative political relationship is to survive. Once the genie of protectionism is out of the bottle, every special interest group will insist on its special claims. While there is clearly no simple way out of this dilemma, the current item-by-item approach has the dual disadvantage of producing tensions without providing a remedy. It would be far preferable to tackle the issue frontally, to seek to alter the Japanese consensus rather than to tilt against its manifestations. Instead of the current protracted guerrilla warfare over details, negotiations with Japan should set the goal to reduce the American trade deficit to an agreed level in a specified number of years. This should be done not by haggling over an endless shopping list of individual items but by specifying an overall total which Japan will not exceed. It would then be up to Japan to stay within this figure by its own internal processes. It could decide whether to reduce exports or to increase imports or to combine both. If the agreed adverse balance is exceeded, the United States would impose penalties until it is achieved.

Such an approach would oblige Japan to put its consensus system into the service of an agreed objective instead of using it as a roadblock in individual negotiations. While this proposal runs counter to the rules of present-trading arrangements among nations, it would be undertaken in an effort to preserve a multilateral system broadly based on comparative advantage.

In negotiating target trade balances the United States should take into account two factors: a) the crucial importance of good political relations with Japan and b) the degree to which Japan increases its contribution to international security and progress.

I do not agree with those who are urging Japan to make that contribution in the military field. It requires an extraordinary imperviousness to history to believe that Japan would rearm substantially to share burdens defined in America and to achieve purposes originated across the Pacific. If even part of Japan's zeal in the economic field were transferred into the military arena the profoundest anxiety would result in China, Korea and Southeast Asia, including Australia.

But there is one area where a Japanese contribution could be crucially helpful to the cause of peace: the growth of developing countries, especially the high-debt areas of Latin America and some African countries such as Nigeria. All indications are that the United States will abandon the existing system of dealing with international debt through austerity and commit itself to the growth of the developing countries. There is indeed no other choice. But in a period of large budgetary deficits America does not have the resources to undertake such a project alone. Japan could serve both the world and its national interest by supporting generously multilateral institutions devoted to global economic growth. In establishing the limit of an acceptable trade imbalance, the United States should give heavy weight to a Japanese contribution to global economic development substantially exceeding its present efforts.

It is to be hoped that the measures described here will be one-time, interim steps on the road toward an overhaul of global economic arrangements. But they are necessary before trade frictions slide into political confrontation. A friendship essential to world peace requires more sustenance than endless bickering over oranges and communications equipment. In the end it can only be enhanced by major collaborative enterprise in great causes.

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Senator **Riegle**. Where Kissinger at that time, in an exposition on trade, calls for an approach that is precisely what I will be offering in the way of this deficit reduction amendment. But he argues that when you have these huge bilaterial deficits over a period of time, that the thing to do is to set a deficit reduction goal, allow that trading partner the latitude within that to make the adjustments that are the most suitable ones to make to bring those overall deficits down; and I thought it was a very solid intellectual rationale for the approach that we are here offering, and which I think is really quite a moderate approach. We are not trying in a severe way to correct this problem overnight. It still would allow a country to export 75 percent more goods to the United States than it imports from the United States, and the annual 10 percent reduction levels are hardly severe in terms of the level of trade surplus that we now see the Japanese and others enjoying with the United States.

Let me ask you, with respect to the worker rights area, do you have some illustrations of some of the most distressing conditions that we find around the world that are now being built into this trade deficit, and there is something that we ought to both understand and be in a position to try to put some constructive pressure on the change? And if so, would you give me some of those examples.

Mr. **Oswald**. Senator Riegle, on a daily basis, one sees in Chile that trade union workers are denied the right to strike, the right to form unions. In South Korea big publicity was given to recent changes in labor legislation, but in spite of that legislation, unions still only can represent workers at one work place, not at more than one work place; and in terms of repression, at union meetings, secret police presence is very common.

In Nicaragua, just last month, the seamen's union leader was arrested by the security forces, and he was only released after heavy international pressure was exerted in their behalf, but he still cannot return to his union.

And in South Africa, one continues to see the denial of African workers their basic rights if they are black in terms of even participating in that society. There are numerous other examples that we presented to the government under the GSP legislation, where they held extensive hearings on this issue. And I would be happy to make them part of the record.

Senator **Riegle**. Thank you. I would like as long a list as you can provide of specifics that will help the committee understand that problem.

[The information follows:]

EXAMPLES OF RECENT WORKERS' RIGHTS VIOLATIONS

1. In Turkey, 264 trade union leaders were sentenced in December to terms of 1 to 15 years in prison. Twenty seven trade union affiliates were dissolved, their property and assets forfeited to the state. On March 25th, Turkish police prevented a demonstration by 700 national and local union leaders who were protesting restrictions on workers' rights.

2. That very day (March 25th) on another continent, Chilean security services and police broke up a demonstration for trade union rights and democracy by the National Workers Command (CNT). Demonstrators were tear-gassed and union leaders severely beaten.

3. In South Africa, hundreds of striking transport workers were dismissed from their jobs after they struck in February, demanding that the "homeland" government of Bophuthatswana recognize their union. A number of union leaders were arrested.

4. In South Korea, recent changes in labor legislation still prevent workers from determining the structure of their own organizations and unions are unable to represent workers in more than one workplace in the same locality. Repression of trade unionists continues as does a heavy secret police presence at union meetings.

5. In Nicaragua, union leaders from the Seamen's Union were arrested in February by Sandinista security forces. Released after international pressure was exerted in their behalf, they have nonetheless been stripped of their trade union posts.

Senator RIEGLE. Mr. Fenton, let me move to you. On page 3 of your testimony, you are very frank in saying that U.S. industry will never be able to compete against 15-cent-an-hour labor abroad, however, regardless of how lean and mean it gets and how technologically advanced, and I think you are exactly right on that.

I would like to ask you to have the TRAC organization take a look at our workers rights provision in this trade bill. I don't know if you have had a chance to try to reach an executive judgment as to where you might be on it, but it might very well be something that you would want to support. And if so, that would be a very helpful development.

Mr. FENTON. We would be very happy to do that, Senator.

Senator RIEGLE. Thank you.

Now, let me just say, Mr. Oliver, I was astonished, as the chairman was, by your comments earlier. And we have had a lot of economists—I think probably most economists in the country—coming before this committee and other committees in the Senate, very much concerned about these trade imbalances. And what they universally say is that there are two end results that we are likely to see some short number of years up the road with these massive trade imbalances in our debtor nation status.

One is either a rapid inflation that will drive up the value of our currency in an inflated sense in an effort to try to dig out from this debtor's hole that we are now in, and going deeper in each day. We are adding new international debt at the rate of $1 billion every 2½ days.

Or, and perhaps even in conjunction with a rapid inflation, that we would have a sharply lower standard of living. Now, I just have to tell you, and you can get these yourself, but they come from economists across the spectrum in the United States—they all are very frank to say that there is a major adjustment coming. They don't know whether it is 2, 4, or 6 years down the road, but there are going to be major negative shocks for this country if we can't turn these trade dynamics around.

And if you don't take the time to understand those arguments and to understand the long-run implications, I think you do a great disservice to this country, and I think you set us up for consequences that you won't be around to deal with—you will be off in some other job.

But the country, I think, will find itself in terrible difficulty, and I think you have some responsibility to think longer term.

The CHAIRMAN. Thank you. I think we have to move on. We have run over our time.

Mr. OLIVER. Senator, may I respond? May I make one comment?

The CHAIRMAN. If you will keep it short, because we have run over our time. Go ahead.

Mr. OLIVER. Thank you. I will be less than a minute. As you know, Senator, I am sure there are economists who don't agree with your statement. And if you did not have Herb Stein here or Milton Friedman, I suspect that you did not get another point of view. Those economists, and I am sure others, and I would be happy to supply names, would disagree with the points you are making.

Thank you, Mr. Chairman.

The **Chairman**. All right. Senator Rockefeller.

Senator **Rockefeller**. Thank you, Mr. Chairman. I have just one question for Mr. Oswald and Mr. Oliver. More or less every time that we get into a discussion of this sort, somebody talks about protectionism. And what is always brought up is Smoot-Hawley. And we have all been on numerous panels and groups where it is pointed out that neither Smoot nor Hawley was reelected [laughter] and it is always a dire circumstance. The fact of the matter is, I have never really heard anybody particularly debate Smoot-Hawley in front of this Committee. I have only been on for a few months, so that may not be surprising. But, I would like your view—Mr. Oliver refers to it twice in his testimony. It is my understanding that the 1920's and 1930's were a bit different than the late 1970's and 1980's. My impression of what we are trying to do in this bill is to lower barriers elsewhere, not to surround ourselves by an enormous brick wall, but, still, Smoot-Hawley is always brought up. I would like your reaction in the present circumstance when you hear the Smoot-Hawley argument used with respect to congressional legislation. And I would like to have Mr. Oliver, if he would, respond to your argument. Mr. Oswald.

Mr. **Oswald**. Senator, first of all, Smoot-Hawley was not the cause of the Great Depression. There were many other factors. There was the excessive speculation, Wall Street blow up, the problems in the 1920's in terms of income distribution with the great majority of people having less income, and thus, not being able to buy what they were able to produce; the collapse of banking, and a number of other things.

But what people fail to see in today's proposals, in terms of trade proposals, is that they are not aimed at establishing a huge wall prevent imports from coming in. They are all aimed at trying to reduce walls elsewhere. I think when people talk of the Riegle-Gephardt bill as being protectionist they are incorrect. They are not aimed at putting a barrier around the United States. They are aimed at getting rid of foreign unfair trade practices, and are outwardly aimed. And Senator Moynihan had indicated earlier that we have fluctuating exchange rates today, which are substantially different than the gold-based exchange rates of the 1920's. So that the elements today are substantially different than they were in the 1920's, and the proposals are not designed to build a unilaterial tariff wall to provide an advantage for the United States, but to remove unfair practices abroad and to reduce the substantial U.S. deficit that exists and burdens the whole international trading mechanism today.

Senator **Rockefeller**. Mr. Oliver.

Mr. **Oliver**. Senator, several years ago, Jude Runisky wrote a book called "The Way the World Works" and it is about 250, 350 pages long. And in that book, he makes the arguments concerning the relationship between Smoot-Hawley and the great depression, and I am certainly wise enough not to attempt to summarize that volume. I can say that I thought it was generally accepted, accepted wisdom, if you will, that the Smoot-Hawley Act was causally related to the depression, if it was not the only cause.

In terms of today, it does seem to me that there is some generally accepted wisdom that protectionism, massive protectionism at any rate, would lead to if not a depression of the nature of the 1930's, at least certainly a downturning in our economy. Obviously, one of the ways that the Japanese, for example, can invest in the United States—United States government securities or corporate securities—is because they have the funds that we send over there to buy their goods. So that if we are not able to buy Japanese goods, they will not have the funds to invest in this country. I think that is a relationship that all of us understand.

I am certainly in favor and encourage opening trade leads, reducing trade barriers, so that we have world trade. And to the extent that is once going on, I obviously applaude that. Nevertheless, I do detect sentiment designed toward creating barriers, and barriers hurt American consumers, because they——

Senator ROCKEFELLER. Is there any other public policy interest which is as important, or, perhaps, more important, than simply the lowest possible price for a product that the government should take into consideration?

Mr. OLIVER. There are surely similar national security interests, but I really cannot speak to those interests, because that is not——

Senator ROCKEFELLER. Could you venture?

Mr. OLIVER. That is not my concern.

Senator ROCKEFELLER. But as a government official, do any other public interest concerns occur to you, in terms of setting policy other than the lowest possible price on a product?

Mr. OLIVER. Well, it is not really the lowest possible price. What it is in economic terms is the best mix of prices and quality and availability and capabilities, and a whole variety of things that consumers want.

Senator ROCKEFELLER. But you make great, great mention in your testimony about the lowest possible price.

Mr. OLIVER. Well, that is true certainly to some extent. "Lowest Price" is also used as a metaphor for consumer desires, which is a price quality mix and, as I say, a variety of other things. Price alone is too narrow sometimes—consumers, for example, will pay more if they get a product that lasts longer. In that case, they offset price with durability. But, in a sense, we use price as a metaphor of what it is that consumers, rather than, for example, what labor, wants.

Senator ROCKEFELLER. I see. My time is up.

The CHAIRMAN. Without objection, we will introduce into the record the statement of Senator Heinz at the beginning of these hearings. Now I would like to yield to Senator Danforth, who has shown great leadership on this issue, and has a long continuing interest in it.

Senator DANFORTH. Mr. Chairman, thank you very much.

Gentlemen, I would like to ask anyone who cares to answer the question, what we do about the Japan problem, as illustrated by three components of that problem. It is said that a high Japanese official said to representatives of the United States that we don't care how good your supercomputers are. We won't buy them. Just forget about it. We are not going to buy them. Consai Airport, $8 billion project, Americans build airports all over this country and all over the world. It is said that the position of the airport authority is Americans just are not going to participate in building this airport. American engineers, American construction companies—don't bother to bid on it, forget about it. You are not going to be part of this.

Japan is about to make a decision on a new attack fighter. They could buy the state of the art in the United States from either of two producers—best in the world. Japan does not make anything like it, does not have the capability, would have to buy the technology to make their own. It would cost them 2½ times as much to produce their own as it would to buy them-off the shelf in the United States. Their position, we fear, is going to be—please don't bother us with trying to sell us your product. We are not going to buy it.

Now these are not oranges or grapefruit or beef. These are state of the art items, very big ticket items, and the position of Japan is—no, we are just not going to buy it. Our business, our job is to sell, not to buy.

Now, what suggestions do you have for dealing with that problem. Mr. Fenton.

Mr. FENTON. Senator, I think all of us who have followed the problem in Japan, some of us at least have come to only one conclusion. Accepting the fact their economic practices, their mercantilism, their buying culture are different from the rest of the world. I am perfectly prepared to accept all of that. And therefore, the only way to deal with the trade imbalances, I think, is to manage that trade with Japan. I think we have to sit down with them as a special case. And using the reciprocity approach that you yourself used when you introduced a bill sometime ago to that effect, we simply have to work out an equitable trade balance. It will be straightforward, managed trade, horse trading, if you will. But I think it is the only way to deal with that persistent problem of Japanese imbalance.

Senator DANFORTH. Anything other than the Gephardt, or in addition to the Gephardt bill, Mr. Oswald?

Mr. OSWALD. Mr. Danforth, we have been meeting with Japanese for many years, and we did not originally support a notion that this was an across-the-board problem. And I think the reason that we did come to the conclusion to support the Riegle-Gephardt approach was that your example is three—one could make that example 53, and continue.

And it just seems that you can't get at the problem at one by one by one, and we are not trying to find fault with the current trade negotiator, the previous trade negotiator, or the one before him, or Mr. Strauss, Democrat or Republican. I just don't think that we have, currently, or will have under S. 490 the weapons to negotiate the deal with the problems that you describe, unless something like S. 499 is included as an overall mechanism.

Senator DANFORTH. Anbody else? Mr. Leibowitz.

Mr. LEIBOWITZ. Yes, Senator. I think that these three examples indicate, if you analyze how they could be handled under current law, that there are many tools available now in legislation, and many more tools that are in some of the constructive legislation that has been proposed in the House and Senate, and that the National Foreign Trade Council supports.

The problem has been a reluctance to use that authority in the past, and I think we are seeing in recent weeks that that will is changing. I think that there are the tools that exist now to deal with that problem.

Senator **Danforth**. I must disagree. I think if the Japanese don't want to do business with us, they will just not do business with us. And by the time we remove one unfair trade practice, there will be 10 others that crop up to take its place. The end result is going to be no sale. And that is their policy. Their basic policy—and I am not talking about the Prime Minister, he might want to do business—but it permeates the country. The basic policy is no sale. Our culture does not include buying things. And I think maybe we should adopt some of their culture on a selective basis. Mr. Oliver.

Mr. **Oliver**. Senator, the attractiveness to me of the Gramm-Kemp bill is that it tends to open up Japanese markets, or the market in whatever country you are talking about, without at the same time harming the American consumer. As I understand it, it would, under the Gramm-Kemp bill, one would try to negotiate a free trade area with say Korea, and if Korea were disposed to provide the same products that Japan would provide, then we would have a free trade area with Korea which would benefit the American consumer. At the time, it would disadvantage the Japanese if they did not open up their markets in a way that we found attractive.

So that it is a way of dealing with the Japanese in a way that benefits the consuming public, instead of disadvantages it.

Senator **Danforth**. It doesn't do much for our workers, though, does it?

The **Chairman**. With Senator Bradley.

Senator **Bradley**. Thank you very much, Mr. Chairman.

Could each of you tell me what, in your view, is the most effective leverage that we have over the Japanese and the Germans to get them to reduce the bilateral deficit.

Mr. **Fenton**. Senator, market access.

Senator **Bradley**. So you say a much tighter market access to the United States.

Mr. **Fenton**. To the United States. That is the biggest bargaining chip that our trade negotiators have, and to the best of my knowledge has not been used as fully and as forcefully as it could be.

Senator **Bradley**. And how would you control that?

Mr. **Fenton**. I'm not sure I understand the question?

Senator **Bradley**. How would you control market access? Do you say to country X, you can't send widgets and digits unless you——

Mr. **Fenton**. I don't think it needs to be totally mechanical. I think it can be governed by the rule of reasoning. Are they efficient producers? Does the economy need these things? It would be a flexible and pragmatic approach. But the name of the game would be market access.

Senator **Bradley**. And the Government would determine that.

Mr. **Fenton**. And the Government would determine that. If the proposal in S. 490 goes through, the statement of trade policy, that might be written in advance to that policy.

Senator **Bradley**. Other people on the panel? Mr. Oswald.

Mr. **Oswald**. Senator Bradley, the only way that we can get market access is to somehow, if they don't take our goods, if they put up limitations, we can't just ship them in, because there is no way that you can force that entry. It is only when they do that refusal, our only weapon is a sort of restriction on their access to the U.S. market. And I think that is where it comes to establishing a quid pro quo in terms of the arrangements.

Senator **Bradley**. So you are saying pretty much what Mr. Fenton said, except you emphasize U.S. reciprocity.

Mr. **Oswald**. One needs to have some sort of weapon, because if they don't take it, you cannot just say, hey, please take it.

Senator **Bradley**. Mr. Leibowitz.

Mr. **Leibowitz**. I agree that market access is probably the most effective lever, it is so effective that it is frightening to use it, particularly lightly or excessively. And that is what concerns us primarily. I think the premise of your question was, in part, that Japan and Germany present similar problems. I think they don't. I think they are very different countries and very different economies. I think you have to look at the causes of each country's surplus and try to address those causes. And I would use market access as a last resort. I don't think it is unthinkable to use it, but I would use it as a last resort.

Senator **Bradley**. All right. We have market access, market access with reciprocity, market access with reciprocity but different approaches to each different country. Mr. Jessup.

Mr. **Jessup**. Senator, I would partially agree. I have argued with my Japanese friends for some 20 years over the same issue that we have been arguing about with them recently. This has always been a problem. They have been very reluctant for cultural and other reasons—and fearful, in economic security terms, especially their own—about doing things. They have made some progress, but by far not enough. We are not going to solve it overnight, in any event. But I think it will require very tough bargaining about market access, about reciprocity, about domestic economic problems in both countries. I think some of our own fiscal monetary policies have certainly contributed to that.

Senator **Bradley**. All right. Market access, market access with reciprocity, market access with reciprocity differing from country to country—all of the above, plus U.S. economic policy, domestic.

Mr. **Jessup**. Correct.

Senator **Bradley**. Mr. Oliver.

Mr. **Oliver**. Senator, I would start, if I may, by questioning the premise.

Senator **Bradley**. Just answer the question. [Laughter.]

I only have 10 seconds. You don't have any answer.

Mr. **Oliver**. Well, I question the premise, which I think is mistaken, and I think it is a mistake to provide an answer to solve a problem that does not exist.

Senator **Bradley**. All right. Well that is a point of view. Now, I noticed none of you said price. None of you said exchange rates. All of you talked about a kind of negotiation between the United States and the other country. It seems to me that we have been in an enviable position and would have increasingly been an enviable position of having Mr. Toyota call a meeting, and the finance minister, and saying open up your markets here, because if you don't, my profit margin, which has disappeared in the United States, our biggest market in the last 6 months, has disappeared, and is going to cut into our employment.

And, instead what the administration did was to try to assure these countries that they would try to put a floor under the value of the dollar. Now, don't you think it was a colossal mistake to have even attempted that? Mr. Fenton.

Mr. FENTON. Yes. I would agree. Yes.

Mr. LEIBOWITZ. I have no comment.

Mr. JESSUP. No comment.

The CHAIRMAN. I would settle for that count if I were you. Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman. I would like to ask the panel a question relating to something I asked last week of Mr. Yeutter with regard to procedure, as is outlined in S. 490, and Presidential negotiating authority.

As you know, S. 490 requires congressionally approved trade policy statements as a conditional precedent for fast-track procedures. How do you view that, each panel member?

Mr. FENTON. Senator, I, in my testimony, spoke very strongly in favor of that provision. I think it will give negotiating leverage to the USTR; I think it will make the American aim in these trade negotiations totally predictable for the people we negotiate with; and I think it will enable the establishment of a national trade policy in which the Congress is linked with the Administration. And it is a unitary effort that would go forward. So, I would support that.

Senator DASCHLE. Thank you. Mr. Oswald.

Mr. OSWALD. I think that in general the limitations on the fast track is that it does not allow separate votes on various items. And I think that—Mr. Fenton, in his formal testimony, talked about the problem of import sensitive industries. There are problems that follow the—Congress lists a whole series of objectives in terms of straight negotiations. One may be achieved and another one not. And the Congress may not be able to well balance what is brought before them. And I think the clear problem with the fast track is it really, I think, negates some of the congressional oversight on trade that is assigned to it in the Constitution.

Senator DASCHLE. What you are saying is that you are opposed to the fast track in concept, and as a result don't believe that any congressionally mandated statement or approved statement is necessary, simply because you oppose fast track to begin with.

Mr. OSWALD. Because I think it does not provide enough of the constitutionally required congressional oversight that is specifically assigned on trade.

Senator DASCHLE. That applies, obviously, that if you had fast track, just by your statement, that some kind of a statement as is suggested in S. 490 would be appropriate?

Mr. OSWALD. Yes.

Senator DASCHLE. All right. Mr. Leibowitz.

Mr. LEIBOWITZ. We don't support the first fast track, which is what I think you are referring to, the fast-track approval of negotiating objectives. We think that the hallmark of these negotiations needs to be flexibility, and even a congressionally approved list of negotiating objectives would not allow the United States negotiators to dictate terms to our trading partners. I think it is a prescription for a very risky set of negotiations, and that is why we don't support it.

Senator DASCHLE. I may ask you to elaborate on that, if you have time. I am not sure I agree, but—Mr. Jessup?

Mr. JESSUP. We at the Consumers for World Trade, the general feeling is that general guidelines would be useful, but very specific guidelines could be detrimental to negotiations. But, as regard to fast track, we think a procedure for approval of agreements and congressional approval of individual agreements as they are reached would enhance the prospect of success of our negotiations. But, obviously, we also feel that throughout that process, there must be very continual consultation with the Congress and with the private sector in order to make sure that this is all acceptable.

Senator DASCHLE. Are you suggesting that it be structured in a way other than what S. 490 would now provide?

Mr. JESSUP. I think S. 490 is a little too specific. I would prefer a more flexible approach.

Senator DASCHLE. Mr. Oliver, I think I already know your answer, but what do you believe, first, of fast track, and second, of a congressionally approved statement?

Mr. OLIVER. Senator, my only comment really is that I think what is important is to preserve Presidential discretion in the matter, because the President represents in a sense, or has closer to heart, the interest of a wider segment of people, and therefore, providing discretion for him is useful.

Senator DASCHLE. Discretion is obviously very good, but how important is discretion if it is perceived that the President has no support? In other words, what real weapon does he bring into negotiations if it is not assumed, or believed, that he has the ability, once negotiating a package, to come back to Congress and expect the majority of the support of the Congress? Mr. Leibowitz, would you wish to answer that?

Mr. LEIBOWITZ. Well, obviously if the President does not carefully cultivate congressional support and brings back an agreement that can't be approved, that is an exercise in futility.

Senator DASCHLE. But isn't that what we are talking about?

Mr. LEIBOWITZ. Well, I think that S. 490 provides a procedure that may be aimed at insuring support in advance, but, of course, the situation can change dramatically during the course of negotiations. I don't think it is insurance of support at all.

Senator DASCHLE. Well, he doesn't wish Congress farewell forever when he leaves. There is no reason why he couldn't come back, right?

Mr. LEIBOWITZ. There is no reason under current provisions that he couldn't come back and shouldn't come back. I mean, it should be a continuous process.

Senator DASCHLE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I apologize not being here for all of the witnesses' testimony. Let me ask each of you a question.

If you could design the trade bill exactly as you wanted, and have it passed, enacted into law, would that solve the trade deficit problems of the United States? Mr. Fenton, yes or no?

Mr. FENTON. I am not willing to choose between those two, Senator. I think that it would have some effect over the long term, particularly in regard to the trade law changes that the Trade Reform Action Coalition is proposing. But I think we probably need more in the way of hands-on management of trade policy, the kind of thing that I would like to see in the statement of intent.

Senator CHAFEE. All right. Fine. Mr. Oswald.

Mr. OSWALD. Would substantially reduce, but not eliminate. I think one of the tests that Congress should have in passing a bill—what would it do to the trade deficit.

Senator CHAFEE. The point I am driving at here is that there are other factors that influence the trade deficit which have nothing to do with what we do in this room in connection with the trade bill. I believe there are, but I am curious as to what you think. I think there are a host of factors that affect the trade deficit that have nothing to do with the trade bill.

Mr. OSWALD. Exchange rates.

Senator CHAFEE. Pardon?

Mr. OSWALD. Exchange rates are clearly a factor of foreign debt that Senator Bradley has talked about, are important elements that impact on the trade deficit of many——

Senator CHAFEE. Some of our own laws in the United States.

Mr. OSWALD. Some of our own laws and general monetary and fiscal policies, in the United States and other countries.

Senator CHAFEE. Mr. Leibowitz.

Mr. LEIBOWITZ. Senator Chafee, I certainly agree that there are many other causes that Congress really can't effectively deal with for the trade deficit. I think the trade reform legislation can play an important part in bringing it to a point where I would define the problem as either solved or on the way to being solved.

Senator CHAFEE. Mr. Jessup.

Mr. JESSUP. I would agree. There are many, many issues beyond the trade legislation that are essential. I would only hope that as you approach trade legislation that you do a balanced basis that does not exacerbate, rather than correct important issues.

Senator CHAFEE. Mr. Oliver.

Mr. OLIVER. Because it doesn't seem to me that we have established that the trade deficit is a problem, I think that a bill——

Senator CHAFEE. Well, I understood that took place. You are a lone voice, Mr. Oliver. [Laughter.]

Mr. OLIVER. I appreciate being invited, because I think lone voices are important. [Laughter.]

But, it might have been we have nothing on the pages that got passed would probably be the best to deal with the deficit, which is not to say that I think we shouldn't make attempts to open up markets for American goods. And that is why I think that the Gramm-Kemp bill is a useful bill, because it encourages, it persuades other countries to open up their market, and if they don't, they suffer the consequences.

Senator CHAFEE. I think we all agree that one of the primary objectives should be opening foreign markets. I don't think you will find any argument with that goal on this committee. As you know, we have had testimony here that while there is a trade deficit of $170 billion, perhaps $20 billion of it is because of unfair trade practices by our trading partners. Say it is $30 billion. Actually $20 billion is the high side in the testimony we have received. But make it $30 billion. That still leaves a $140 billion trade deficit.

Now, it is my belief that there are a whole variety of factors that go into creating this trade deficit that have nothing to do with trade policy. They are not all beyond our reach. In other words, it is not something intangible and uncorrectible like the third world debt, or the value of the dollar versus the Yen and so forth; that we can't correct.

I want to ask a quick question of Mr. Oswald. You have been very strong in favor of the workers' rights legislation and wish to make that part of this bill. What do you do about the situation with the Soviet Union and China? I suppose, there is no question that a workers rights provision would prohibit us from buying from both of those countries, would it not?

Mr. OSWALD. Senator, it doesn't necessarily prohibit any trade. It would treat the trade there as the same as other unfair practices are treated under Section 301. Currently, we do prohibit trade from those countries if they are produced by slave labor, and there have been allegations that certain products have been produced in some of the goulags in the Soviet Union, and I think it is appropriate that those be kept out of the United States. That is part of the Trade Act since 1890, as a matter of fact, that we don't use those.

Senator CHAFEE. Right, but going beyond the slave labor, I think no one would say that in the Soviet Union or in China there is "the minimum level of respect for workers rights."

Mr. OSWALD. That is correct.

Senator CHAFEE. So therefore, goods from those countries would be kept out, or violation of workers rights would be the basis for a 301 action to keep them out.

Mr. OSWALD. It could become the basis for a 301 action.

Senator CHAFEE. And then, presumably, we would lose those countries as markets for our goods?

Mr. OSWALD. I believe that the goods that they buy from us they buy because of their master plan that needs those goods for their own internal processes.

Senator CHAFEE. And when they buy our wheat, they are not able to get it someplace else?

Mr. OSWALD. That is the reason that they buy it. Not out of the goodness of their heart.

Senator CHAFEE. Well, all right. Fine. Thank you, Mr. Chairman.

Senator MOYNIHAN. Mr. Oswald, if I could just interject here and make a point in response to Senator Chafee's questions. Of the three organizations at the League of Nations—the League, the Royal Court, and the International Labor Organization—the one that we were perhaps least likely ever to have joined was the ILO, and that is the one we did join. The charter was drawn up by Samuel Gompers, who was chairman of the Commission that drew up the charter in Paris in 1919. The AFL was there. The AFL was there in 1934 when President Roosevelt moved to join. And all over the world now there is a network of treaty obligations and conventions, with respect to rights to organize and such.

I wonder if the AFL participants, so much a part of this tradition, could provide this committee with a list of the member nations of the ILO which have signed the basic treaty of labor conventions on the right to organize. We are not talking about the 8-hour day or whatever, but those basic elemental organization rights. And in your judgment, to what degree they are in compliance. Could you do that?

Mr. OSWALD. We would be very happy to.

Senator MOYNIHAN. We would very much appreciate it, because these are something we take seriously and ought to do. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman. Gentlemen, I think you all agree that one of the greatest problems we have in trade today is with Japan. The trade deficit is very, very severe. I think you will also agree that we have our view of what is causing the trade deficit—we Americans—and Japan has its view of what is causing the trade deficit. I think you will further agree that probably the truth is somewhere in between—that is, we Americans are not totally correct in the "American view" of the case of the Japanese trade deficit, and neither is Japan totally correct in Japan's view of the causes of the trade deficit.

And, probably, if we are going to resolve the deficit, assuming we want to, I believe we do, we should understand the deficit from a Japanese point of view, and hopefully they can better understand it from our point of view. So I would like to ask some of you how you regard the deficit and what the causes are. I am beginning first with Mr. Oswald. What do you think the best Japanese argument is for the trade deficit? The Japanese point of view. What do you think the best Japanese argument is for the trade deficit with Japan?

Mr. OSWALD. The Japanese, I think, just say that Americans want Japanese goods. The problem is that what they refuse to see is what Senator Danforth previously pointed out——

Senator BAUCUS. I'm not talking about the problems. I want you to put yourself in the shoes of the Japanese and articulate the causes of the trade deficit from the Japanese point of view. I am going to do the same with some of the so-called free traders here from the other side. But, I am just trying to force ourselves as Americans to see it from their point of view. That is not to say it is correct, but at least see it from their point of view.

Mr. OSWALD. Their point of view is only that Americans want Japanese goods, and Japanese buy other goods only to the extent that they need those other goods; and they don't need United States goods, except for raw materials and they don't need our computers and our other things, because they will develop those same products.

Senator BAUCUS. Are they concerned about the quality of American products?

Mr. OSWALD. I don't think they basically are concerned about quality of American products. I think it is not a question of when they don't accept American cut logs, it is not the quality of our ability to cut to specifications. It is the notion that those logs can be cut in Japan and they don't need cut logs. They don't need plywood, because they are able to do it themselves.

Senator BAUCUS. Do you think that they think American management labor relationships are not as productive or cooperative as they could be?

Mr. OSWALD. I don't think that has anything to do with why they accept or don't accept American goods.

Senator BAUCUS. We are addressing productivity and competitiveness and being price-competitive with our goods in Japan. And we are trying to address the quality and the price of the American products in Japan. I am just asking from your—how do you think the Japanese see the cause of the trade deficit?

Mr. OSWALD. They see that the Americans want Japanese goods and that many Japanese don't feel that they need U.S. goods, that they will develop their own sources, and that they will produce their own goods for their own citizens, except to the extent that they need raw materials. And they need to trade for raw materials and they are "my own country" dependent on many others for raw materials.

Senator BAUCUS. Mr. Leibowitz, what do you think the best argument is for those who think that the country of Japan is unfair? What is the best unfairness argument that you can come up with?

Mr. LEIBOWITZ. You mean from the point of view of Japan or from the point of view of the United States?

Senator BAUCUS. From the point of view of America, that Japan is unfair.

Mr. LEIBOWITZ. Of the United States. All right. This is an interesting challenge.

Senator BAUCUS. That is why I asked it.

Mr. LEIBOWITZ. I think that the best American argument is that Japan's markets are entirely too closed. It is a vestige, I think, of their post-war history, and the time has run out for gradual and glacial change in that aspect, and the trade deficit needs to be reduced more quickly than the Japanese are willing to reduce it. That is the primary thing. We must admit that Japanese goods have earned their way into this market.

Senator BAUCUS. Whoa. You are slipping to the other side.

Mr. LEIBOWITZ. I am slipping to the other side.

Senator BAUCUS. That is right.

Mr. LEIBOWITZ. But I think the best American argument——

Senator BAUCUS. That is the point to this exercise, we are not going to slip.

Mr. LEIBOWITZ. That is right.

Senator BAUCUS. We are not going to slip.

Mr. LEIBOWITZ. The best American argument is that Japanese markets are too closed.

Senator BAUCUS. Now what do you think the validity of that American view is, that is Japan is closed and does not provide access. Is there any validity to that or not?

Mr. LEIBOWITZ. Certainly.

Senator BAUCUS. All right. Mr. Oswald, what validity do you think there is to the Japanese view that American products could be a little more price competitive and more attention should be paid to quality and management and employee relationships. Is there any validity to that at all?

Mr. OSWALD. Not as the basis for the trade deficit. It may be a question in terms of whether, I think there is some validity in terms for certain products, either quality or labor/management relations, because I don't think it explains any part of the trade deficit.

Senator BAUCUS. I frankly think that both American and Japanese views have validity. It is partly the point that Senator Chafee was making. I don't think that Japan's side is pure by any stretch of the imagination. I think Japan is much to closed for the modern 1980's and the 1990's. I also think that we Americans can do a lot more to reduce the trade deficit. It has nothing to do with the denial access to American products in other markets. It is both, and I suggest that it is as important as the trade bill, it is very important. I think we have to toughen up our trade laws, because we can't get beat around anymore.

I also think we have to get tough on ourselves, or at least accept the challenge of being more productive, creative, and innovative in America so that we can sell products better overseas as well. Thank you.

Senator MOYNIHAN. Senator Packwood.

Senator PACKWOOD. Mr. Fenton, in your testimony you said it is important to save "key" U.S. manufacturing industries from foreign mercantilism and unfair trade. How do you define a key industry?

Mr. FENTON. Any industry, like steel, which accounts for 90 percent of the use of metal in this economy, for example.

Senator PACKWOOD. Say that again.

Mr. FENTON. Ninety percent of the metal consumed in the U.S. economy is steel.

Senator PACKWOOD. I understand that.

Mr. FENTON. By the number of its employees, which are now sadly diminished, 150,000 employees we have in the steel industry, and the amount of the capital investment that has been made in it. All of those plants also have typically very long-lived capital cycles, where you invest what is typically a very considerable amount of money, in steel. You are making an investment that will normally work in 15 to 20 years.

Senator PACKWOOD. Are you suggesting—I didn't realize this, and I didn't find it in your statement—that if an industry has heavy capital investment and lots of employees, it is a key industry?

Mr. FENTON. It is one of the evidences to me that if they would be able to make those investments and employ those people, it clearly was at the time the industry was growing into a key one. Yes.

Senator PACKWOOD. Say that again. It was at the time——

Mr. FENTON. Industries may decline, they may grow, but if you have an industry which is characterized by a very large amount of capital investment and by a very large number of employees, I would say that that is on the list of key industries.

Senator PACKWOOD. And shall forever more be on the list.

Mr. FENTON. I didn't say that, Senator.

Senator PACKWOOD. Well, then how do you identify when it ceases to be key?

Mr. FENTON. I don't think—I think to have a list of key industries and non-key industries, to me, is an oversimplification of the categorization of industries and their place in the economy. The major industries which have the biggest capital investments, the largest number of employees, I would certainly say at any given time are key.

Senator PACKWOOD. No matter what they manufacture.

Mr. FENTON. Well, if they didn't manufacture something that was needed, they would not be there. They are presumably producing goods which are utilized in the economy to justify the original capital investment in them in the first place.

Senator PACKWOOD. But those goods could be manufactured overseas and imported.

Mr. FENTON. True. Yes, that is perfectly true.

Senator PACKWOOD. So, the standard is not solely that they have a lot of capital and employees. They must have some utilitarian value to the United States.

Mr. FENTON. Yes.

Senator PACKWOOD. And a value that we don't want fulfilled by imports, I take it.

Mr. FENTON. Well, the weighing of imports and whether they are legitimate or not will depend on whether the conditions of competion between the relevant American industry and the foreign industry are equal. We have seen, particularly in steel, that is dramatically not the case and has not been so for at least a quarter of a century.

Senator PACKWOOD. I hear your answer, but I'm not sure I understand it, so I'm going to repeat it.

If there is heavy capital investment and large employment, that is probably a very significant indicator of a key industry.

Mr. FENTON. Yes.

Senator PACKWOOD. Regardless of what it makes. I have no more questions, Mr. Chairman.

Senator MOYNIHAN. I would like to just ask one last question and again go down our panel. We hear a great deal about trade practices and the flow of goods back and forth. But what exchange rates determine is the price. Is is not the case that exchange rates determine the price at which goods are sold here, and which American goods are sold abroad? And so, isn't price always the largest, or almost always the largest determinant of success in sales? Let's see, Mr. Jessup, you are a respected and elder gentleman and statesman in the Senate.

Mr. JESSUP. Price obviously is important, but I think today one of our real problems has been the question of quality.

Senator MOYNIHAN. Price and quality.

Mr. JESSUP. Price and quality.

Senator MOYNIHAN. Sure.

Mr. JESSUP. Let me give you an example from New York State. I will not bore you with the comments that my wife and I made about a typewriter that came out of New York State some years ago, which was a horror. I am pleased to see that the typewriter company is now making a better machine. I do not believe that it may have made that choice if it had not had some competition, and the competition from abroad.

And therefore, I think what we need is to be very careful in our balance here that we don't destroy some of the competitive forces that are upon our economy.

Senator Moynihan. True.

Mr. Jessup. And that involves both price and quality.

Senator Moynihan. But we have had testimony here from the Kodak Co., when under this administration, the dollar appreciated enormously in the aftermath of 1982 it cost them $1 billion in profits. They are a perfectly competitive company, and they said they can complete head to head with Japan. They have been in Japan since the 1920's, they manufacture there, they fight with Fuji there, but they can't sell a roll of film in West Germany because our exchange rate means our film costs 40 percent more than the Japanese product.

Mr. Jessup. There is no question that price and exchange rates—but the exchange rates are the result of a whole range of other factors. I just think today that billions of dollars that are traded in the exchange, in money everyday.

Senator Moynihan. They are not as much governmental determined as they were.

Mr. Jessup. Correct.

Senator Moynihan. When we left gold and went to Bretton Woods, and then left Bretton Woods and gold, we got ourselves into a world where we don't have much control over these matters, do we? Mr. Fenton?

Mr. Fenton. Senator, there are cases in which prices do not respond to exchange rates. We happen to be in the presence of the case of Japanese steel. Despite the yen going from 230 or 240 yen and falling off to 150 or less, the prices of Japanese steel in the United States market have hardly responded at all.

Senator Moynihan. No, wait. Now there is a very specific thing. Let's find that out. You can give us this information. You are with the Iron and Steel Institute.

Mr. Fenton. Yes sir.

Senator Moynihan. Now, here is an example. The exchange rate has moved dramatically—I think it is a record low right now against the yen—and yet the American dollar price of imported Japanese steel has not changed. Does this mean that somebody is breaking rules?

Mr. Fenton. Or they are accepting either sharply reduced profits or losses in order to retain market share.

Senator Moynihan. Or they are being very good businessmen. So, it doesn't automatically mean that they are breaking the rules—Mr. Oswald?

Mr. Oswald. Senator, prices far from the only item, one can show example after example—Senator Danforth gave three examples from Japan in terms of supercomputers, Konsai Airport, and U.S. attack fighters—where it was not a matter of price. If it was a matter of price, we should have been building all three of them because of our great advantage. In Brazil, you can't sell a personal computer, because they want to build their own personal computer. In Europe, they are supporting the airbus, not because Boeing can't make planes cheaper, but because they want to have an aerospace industry.

In Italy, they only allow 2,200 Japanese cars to be imported and not because other cars can't be made cheaper. So, that in many cases, the restrictions are not a matter of price, they are a matter of public policy for those countries regardless of what the price is.

Senator MOYNIHAN. But we have heard that, about 20 percent of our problem is restrictive trade practices. I would think the remainder of the problem is heavily influenced by price and efficiency.

Mr. OSWALD. But there has been no change in exchange rates, for example, with Canada, where it used to be 1 to 1, but now there is about a 30 percent difference. The Korean won has moved in the opposite direction and the Taiwanese dollar has had practically no change, or a very slight one.

Senator MOYNIHAN. But might I say that about four years ago, we had a situation in which a well-known milling operation in Minneapolis was found on the verge of bringing in enormous shipments of Argentine wheat, because it was cheaper than the stuff that grew in Iowa 60 miles away. And that was wholly a function of the exchange rate.

Mr. OSWALD. Yes.

Senator MOYNIHAN. Well, gentlemen, you have been an extraordinary panel. Don't get up. Nobody move. Nobody in the room move for two minutes.

I want to thank Mr. Oliver, who has come before this committee with very strong views that are obviously not shared by the panel, and not always shared by the committee, and has presented them with good humor and good nature and quality and reference. And it was a class act and we appreciate it.

Mr. Jessup, you have been a statesman devoted to this subject for all of a lifetime, and we thank you for that as well as for your testimony.

Mr. Leibowitz, this is a very fine appearance by a young man beginning in a very honorable institution.

Mr. Oswald, what can we say more than that the AFL-CIO is always welcome before this committee and has been in its one form or another for more than a century. There have been times when it has been more welcome than other times. [Laughter.]

Senator MOYNIHAN. And this may be one of those times. Mr. Fenton, I think this is your first appearance before the Committee of Finance, which is the oldest committee in the U.S. Senate. And we very much welcome you, sir. You can't help but have noticed the number of questions which were addressed to you. And we can't help but to have noticed the clarity with which you responded, except when the question was so obscure as to preclude anything more than a "well on the one hand and then on the other."

Gentlemen, we thank you all, and I thank our guests and audience.

The hearing is adjourned.

[Whereupon, at 12:10 p.m., the hearing was concluded.]

COMPARING MAJOR TRADE BILLS

WEDNESDAY, APRIL 8, 1987

U.S. Senate,
Committee on Finance,
Washington, DC.

The committee was convened, pursuant to notice, at 9 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Baucus, Mitchell, Riegle, Rockefeller, Daschle, Packwood, Danforth, Chafee, Heinz, Wallop, and Durenberger.

[The press release announcing the hearing and the prepared statements of Senators Bentsen and Heinz follow:]

Press Release #H-34 (Revised)

PRESS RELEASE

FOR IMMEDIATE RELEASE
April 3, 1987

UNITED STATES SENATE
COMMITTEE ON FINANCE
SD-205 Dirksen Senate Office
Building
Washington, D.C. 20510

FINANCE COMMITTEE CHAIRMAN BENTSEN ANNOUNCES TIME CHANGE FOR APRIL 8, 1987 TRADE HEARING

Washington, D.C. - Senator Lloyd Bentsen (D., Texas), Chairman of the Senate Finance Committee, announced Friday that the hearing to compare major trade bills, originally scheduled to begin at 10:00 a.m. on Wednesday, April 8, 1987, will now begin at 9:00 a.m. on the same day.

P.R. #H-34 (Revised)

STATEMENT OF THE HONORABLE LLOYD BENTSEN
AT THE FINANCE COMMITTEE TRADE HEARING
WEDNESDAY, APRIL 8, 1987

THIS IS THE THIRD DAY OF HEARINGS COMPARING MAJOR TRADE BILLS BEFORE THE CONGRESS. ON APRIL 2, WE HEARD FROM AMBASSADOR YEUTTER. YESTERDAY WE HEARD FROM A DIVERSE PANEL OF WITNESSES. AND TODAY WE HAVE A GREAT MANY WITNESSES TO HEAR FROM AS WELL.

ON EACH OF THESE DAYS, I HAVE CHOSEN TO ADDRESS A MAJOR ISSUE IN THE TRADE DEBATE THIS YEAR.

ON THE FIRST DAY, I DESCRIBED THE DEBATE ON ENFORCING TRADE AGREEMENTS. THE HOUSE AND SENATE BILLS BOTH MANDATE RATALIATION FOR FOREIGN VIOLATIONS OF TRADE AGREEMENTS; THE ADMINISTRATION WANTS DISCRETION TO DO NOTHING ABOUT UNFAIR TRADE PRACTICES, EVEN IF A FOREIGN GOVERNMENT VIOLATES A TRADE AGREEMENT.

YESTERDAY, I DESCRIBED THE ISSUE ON NEGOTIATING AUTHORITY. THE HOUSE AND THE SENATE WANT TO PARCEL OUT NEGOTIATING AUTHORITY CAREFULLY, TO ASSURE THAT THE EXECUTIVE BRANCH CONSULTS WITH THE CONGRESS ON TRADE FROM THE BEGINNING TO THE END OF ANY TRADE NEGOTIATION. THE ADMINISTRATION WANTS TO BE FREE TO NEGOTIATE FOR 10 YEARS WITHOUT ANY FORMAL CONGRESSIONAL REVIEW OF THEIR NEGOTIATING STRATEGY. THEN, WHEN THE INK IS DRY ON THE AGREEMENTS, THEY WANT US TO TAKE IT OR LEAVE IT WITH RESPECT TO IMPLEMENTATION OF THOSE AGREEMENTS.

Today I want to discuss another major area of concern, import relief for domestic industries seriously injured by imports, the so-called escape clause or section 201.

The purpose of import relief is -- or should be -- to encourage our industries seriously injured by imports to improve their competitiveness.

The GATT permits us to protect temporarily our domestic industries. It is our Government's right, under the GATT, to encourage those industries that benefit from temporary protection to use the protection as a breathing space in which they can pull themselves up by their own bootstraps.

There is deep concern that the escape clause, as written, discourages firms from improving their competitiveness.

The House and the Senate want to reward American industries that can show they are ready to take the steps necessary to improve their competitiveness. Under the House and Senate bills, domestic industries that make such a showing have a greater assurance of import relief. The Administration, in contrast, wants to be free to turn down relief for domestic industries, even if they show they can use the breathing space of relief from imports to improve their competitiveness.

Now we are interested to hear the views of our witnesses today on these issues.

SENATOR JOHN HEINZ
COMMITTEE ON FINANCE
HEARING ON TRADE LEGISLATION
APRIL 8, 1987

OPENING STATEMENT

Mr. Chairman, I am delighted to welcome Dexter Baker to the Committee today. Dexter is a long-time friend and one of the real leaders in manufacturing both in Pennsylvania and in the nation as a whole. He is here representing the chemical industry, which has a large stake in the outcome of any New Round negotiations, particularly with respect to tariff reductions and intellectual property issues. I know the industry is also concerned with intellectual property protection in the Canadian free trade talks, and I intend to raise that issue when I am in Ottawa later this week.

Let me also particularly welcome our colleage Fritz Hollings to the Committee. He and I have been on the same side of many trade battles over the years, and I think he has made an important contribution to the debate on several trade bills. He has a new bill this year -- some of it quite familiar to me -- and I hope the Committee will give it every consideration.

The CHAIRMAN. This hearing will come to order. It is 9:00 and the hearings are scheduled to begin at this time. We have quite a number of witnesses to be heard today; and I will ask that those witnesses observe their time limitations. We will be quite strict on time.

This is the third day of hearings comparing the major trade bills that are before the Congress. On April 2, we had Ambassador Yeutter. Yesterday we had a diverse group of witnesses, talking about the trade bill. On each of these days, what I have tried to do is touch on one of the major subjects of discussion and debate on the trade bill.

On the first day, we talked about enforcing trade agreements. The House and the Senate both mandate retaliation when you have a violation of a trade agreement with another country. What the administration wants is to be able to do nothing if they so choose when there is an unfair trade practice, even if it is a violation of a trade agreement.

Yesterday, I described the issue on negotiating authority. Now, the House and Senate bills want to parcel out very carefully the President's authority to negotiate trade agreements. I am not so sure that the executive branch is going to consult with the Congress during the period of negotiation on the trade agreement. What the administration wants is to be free to negotiate for 10 years without any formal review by the Congress. What that means is that you can have the agreement presented to us, once the ink is dry, and it would be presented to us on a take it or leave it basis. To my way of thinking, that is really practicing brinkmanship.

One of the things the administration should have when negotiating with our trading partners is the knowledge, and our trading partners should know, that the Administration has been consulting with the Congress as they go, and that we are presenting a united front.

We are not talking about the Congress negotiating the agreement. Obviously, we are not equipped, and should not be trying, to do that. But we are talking about setting up parameters. We are talking about agreeing upon objectives regarding trade.

Today, I want to talk about another major issue of concern, and that is import relief for domestic industries that are seriously injured by imports, the so-called "Escape Clause," or Section 201 of the Trade Act of 1974. The purpose of import relief is, or it should be, to encourage our industries that are seriously injured by competition from abroad to improve their competitiveness. Now, the GATT permits us to temporarily protect our domestic industries. It is our Government's right under the GATT to encourage those industries that benefit from temporary protection to use that protection as a breathing period when they can pull themselves up by their own bootstraps; and by that, I mean make the kinds of capital investments that are necessary to modernize and improve their productivity, bring about changes in relations between management and labor—things that will help us handle the competition from abroad, once that period of protection has passed.

There is deep concern that the escape clause, as it is now written, discourages firms from improving their own competitiveness.

The House and the Senate want to reward American industries that can show that they are ready to take the steps that are necessary to improve competitiveness.

Now, under the House and the Senate bill, once they do that, they have a greater assurance of getting some kind of relief. The administration, in contrast, wants to be free to turn down relief for domestic industries even if they show they can use that breathing space to improve their competitiveness.

These are some of the issues I want to see addressed today by the witnesses that are appearing before us. I am very pleased this morning to have as our lead off witness, a very distinguished friend, Senator Levin from Illinois—I beg your pardon—from Michigan.

Senator **Levin**. A Big 10 competitor of ours, Senator.

The **Chairman**. Please proceed.

STATEMENT OF HON. CARL M. LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator **Levin**. Thank you so much, Mr. Chairman. First, let me congratulate you for what you are doing. It is a very long and painstaking and, the way you do it, a very thorough process, and we are very much in your debt. And my constituents are very much in your debt and in this committee's debt for the process that you are now following to try to produce some relief in the area of trade.

The proposal which I am going to offer for the committee's consideration is more technically a 301 proposal; but for reasons I am not 100 percent sure of, my staff thought it would be appropriate for me to testify today, so I hope that that fits in with the committee's plan.

The one thing that we must do—all of us in the Congress—Mr. Chairman, is to produce something which our people will acknowledge does the job. We cannot, I believe, produce a trade bill which does not address the bottom line, which is American jobs, American competitiveness, the future of the American economy. And I think, as a result—as you and I have discussed—that we must address the trade deficit in a fairly direct way, at least in part of this legislation.

And I would like to offer to the committee one proposal which addresses unfair trade practices and does it in a way which both cures those practices, addresses them directly, but also reduces the great deficit in the process. Trying to reduce unfair trade practices, to me, is not protectionism; it is pure common sense pragmatism.

You can't allow other countries that have closed their doors to your products to have access to your markets. It is that simple. We should treat our trading partners no better than they treat us, not because we don't like them, but because they are economic competitors of ours.

And I think we should finally decide that, when countries discriminate against our products, we are going to treat them no better than they treat us. That is the bottom line for me.

Mr. Chairman, we already have annually a National Trade Estimate that is produced by the Office of the United States Trade

Representative. The Congress requires the Trade Representative to make these annual estimates. We already know, at least approximately, what these barriers, these discriminatory practices are; and we already, in many cases at least, have an estimate of the cost to American businesses—and that means to American workers—of those discriminatory practices abroad.

So, we already have the basic materials at hand which would permit us to retaliate against countries that discriminate against our goods. We already have the authority in the President to retaliate. That authority exists in section 301. What we don't have is a requirement that the President retaliate in a way which will reduce the deficit with countries that have large trade surpluses with us and which engage in discriminatory practices.

The proposal which I have offered, which I am modifying and will offer in a modified form, requires that the President come up with a plan to retaliate against countries which discriminate against our products, and directly connects that required retaliation to the estimates that we get annually from the Trade Representative of the cost caused by discrimination against American barriers.

What this proposal says is that, if any country for at least two years has discriminated against American products, and if the trade deficit with that country is at least $3 billion, the President then must by April 1 give us a plan to reduce the deficit—and those are the critical words—with that country by an amount equal to the loss to American industry caused by discriminatory barriers.

And what is unique about this proposal is that the amount of the retaliation, the amount of the deficit reduction, is directly linked to the dollars that are lost to American industry by the discriminatory barriers which we face in those countries and which are identified in this annual estimate.

It is that linkage which distinguishes this proposal. It is the precise dollar amount linkage which makes this proposal different from some of the other proposals which this committee has before it.

Mr. Chairman, in closing, let me say that some will say: "Are you mad at the Japanese, or are you mad at the Koreans?" And my answer is: "Not at all. I am mad at my own Government."

People back home say you sound like you are angry because other countries don't allow in American beef or don't allow in American rice or put quotas on American citrus or discriminate against Amerian auto parts; and that hurts me right where I live back in Michigan. And the answer is that I am frankly disappointed with my own Government for not responding. I am not mad at other countries for taking advantage of our foolishness. I am mad at us for being foolish and naive in this world.

And I think we have to end that in this trade bill; this bill that you have introduced goes a long, long way to do that. I commend you on it. I would urge that this committee take the next step, which the American people will support because it is not protectionist; it simply treats other countries the way they treat us in a commercial, competitive world. It is the only way to get rid of those trade barriers.

Unless we connect those trade barriers in some way to deficit reduction, I think we will have done only part of the job. And again, I thank the chairman for allowing me this opportunity and congratulate him on all of the initiatives which he is taking in the area of trade.

The CHAIRMAN. Senator Levin, we appreciate very much your testimony. You have been a leader on this issue and have had a great deal of interest in it.

You take it a step beyond our provision on section 301 by getting to numbers in the national trade estimate. Let us take a look at it and give that consideration. I think it is a valuable contribution.

Senator LEVIN. Thank you, Senator.

The CHAIRMAN. We are very appreciative of having you as our lead off witness this morning.

Senator LEVIN. Thank you.

The CHAIRMAN. We have another distinguished Senator, Senator Robert Graham from Florida, here this morning who, as Governor of the State of Florida—a State with its full share of sea ports and a great interest in trade—has been very much involved in the issue before he arrived here. He is now carrying it on as the Senator from Florida. We are very pleased to have you this morning.

[The prepared statement of Senator Levin follows:]

Statement of Senator Carl Levin
Hearing of the Senate Committee on Finance
April 8, 1987

Mr. Chairman and members of the Committee, thank you for the opportunity to testify at this Finance Committee hearing on the future direction of our trade policy. I compliment the Committee for holding this series of hearings, and particularly congratulate the distinguished Chairman, Senator Bentsen, for the leadership he has shown on the trade issue.

As this panel well knows, there are no decisions more important for the economic security of the United States than those Congress will make over the next few months with regard to trade legislation. And we had better make certain that we -- and when I say "we," I include both Houses of Congress and the Administration -- put together a trade bill that does what we say it is going to do. America's workers, farmers, and businesses expect us to produce legislation that will enhance America's competitiveness in the international marketplace, and reduce the enormous trade deficits that are costing us jobs and profits.

I think most would agree on the broad goals we are trying to reach--the question is, how best to get there? Clearly, making improvements in the trade laws is one part of the answer. The international trade environment is vastly different today than it was in the three decades or so after World War Two, and our trade laws should be modified to take account of this new reality. The organizational structure which is supposed to implement our trade laws has also become outdated. We need a more coordinated trade policy. For that reason, I support consolidating the various agencies and parts of agencies responsible for formulating and implementing trade policy into one Department of Trade and Industry. The Governmental Affairs Committee is working on its portion of the trade package right now, and several of us on that Committee hope that we will report out a measure containing a Department of Trade and Industry proposal.

These changes are needed for the long-term goal of keeping the United States competitive into the 21st century. But in the near-term, we've got to address the havoc being created by the biggest trade deficits in our nation's history. It is my belief that to achieve this immediate goal we needn't rely solely on new laws -- we've also got to make existing laws work.

What can we do within existing law to get our trade deficit down from its currently disastrous levels? In my view, there are three major contributing factors to our trade deficits that it is possible to do something significant about in the near-term: exchange rate imbalances, the federal budget deficit, and the unfair trade practices and policies of our trading partners. The first two problems, of course, are closely related and I think we've begun moving in the right direction on both of them, although we still have a long way to go.

In the area of unfair trade, however, it seems to me that our country hasn't even discovered the name of the game. The name of the game is not protectionism -- it is pragmatism and common sense.

Isn't it simple common sense that if the other guy closes his doors to your products, you must pry those doors open or else treat him the same way he treats you? How in the name of our future -- or fairness -- can we tolerate a situation where a country says, "you cannot sell more than X tons of this or Y tons of that or none at all of that product to us" -- while that same country has virtually free access to our markets? It is this principal that the Administration -- and I was also critical of the previous Administration in this regard -- has not been vigorous in pursuing.

Trade laws already in place give the President authority to combat unfair foreign trade practices. President Reagan gave a recent display of how this authority can work in the semiconductor case. But I am concerned that it wasn't until Congress was threatening to act and the Japanese were clearly violating an agreement which had been extremely difficult to get them to negotiate in the first place that retaliatory action was taken by the President. If our country is going to take action against unfair traders only in order to pull the legislative rug out from under Congress, we are going to sacrifice more of our industry to foreign competition, and consign more of our workers to the unemployment office.

There is nothing "protectionist" about taking strong action against unfair trading practices before the practices get out of control. We can already identify what these practices are and what their trade-distorting impact is -- beginning in 1985, Congress required the Trade Representative to submit an annual report called the "National Trade Estimates" which contains this information. Why not use this annual estimate of the cost of unfair foreign trade practices and policies as a basis for actions aimed at reducing bilateral trade deficits?

I am offering legislation to do exactly that. My bill requires USTR to make a monetary estimate of how much more

U.S. companies would be able to export were it not for the unjustifiable, unreasonable, and discriminatory trade practices of our trading partners. These estimates would become deficit reduction goals for each country with which, in each of the past two years, the U.S. has run a trade deficit of at least $3 billion, and which, for the past two years, has been identified in the National Trade Estimates report as having unfair trade practices. Interested parties would have an opportunity to challenge the deficit reduction goals and the estimates on which they are based, and USTR would have discretion to adjust the goals accordingly. By April 1 of each year, the President would be required to submit a plan explaining how he will achieve the deficit reduction goals. The President can use the full range of his existing authority to achieve the goals -- authority to negotiate agreements, authority to threaten retaliation, and authority to retaliate with tariffs or quotas if negotiations fail.

In other words, this approach simply requires the President to use existing authority to end this particular source of our devastating trade deficits.

I hope that the Finance Committee will give serious consideration to this proposal and to proposals similar to it. I fear that a trade bill without a provision that allows us to fight unfair trade practices in a direct and forceful way -- by reducing our bilateral deficits with countries engaging in unfair practices against us -- will not have the results the American people expect. Yes, we need competitive strategies for the 21st century and beyond. But we also need to get some fair play into our trade relations right now.

Again, thank you for allowing me to share my thoughts with you today.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator **Graham**. Thank you very much, Mr. Chairman.

I would like to join in the comments of Senator Levin in expressing appreciation to you and to the members of this committee for the leadership that you are providing on this central issue to United States economic competitiveness in the future. And I look forward to participating in the debate as this process moves forward.

Mr. Chairman, what I wanted to speak about today is a continuation of the debate that we have already had. We have just finished a strenuous debate on the merits of continuing military aid to the Nicaraguan Contras. What that debate highlighted is that, despite our differences on the specific issue of the Contras, we as members of the Senate seemed to come to agreement on two major points: one, that we have an opportunity for a newly defined and sustained relationship between this country and the countries of the Caribbean Basin; and two, that we cannot base that new relationship on a single tactic.

A comprehensive, broad-based foreign policy must acknowledge our historical, cultural, political, and economic ties as well as diplomatic and military options. The greatest problems of Central America and the Caribbean region are economic. If we are to broaden our agenda to address the real needs of these small nations in our own hemisphere, we must help them to economic stability and development.

In our overall trade picture, the Central American Caribbean nations are relatively small trading partners. The International Trade Commission reports that the United States imports from the countries in the Caribbean Basin Initiative amounted to less than 3 percent of our total imports in recent years.

All 23 countries cumulatively constitute less than one percent of our trade deficit, but the limited preferential treatment we give to these CBI nations is vitally important to them. The Trade Bill raises the concern that our focus on the large trade issues that exist among our major trading partners could lead to an inadvertent sliding of Caribbean Basin partners.

Unintentional oversight of the impact of major trade legislation on the fledgling and fragile economies in the Caribbean Basin would be a costly mistake. The Caribbean Basin Initiative recognized the importance of this region to the United States, recognized the importance of stimulating economic growth through private sector initiatives.

We need to be particularly sensitive, as we work on the larger trade bill, to the needs of our neighbors to the south, to the continued viability of the Caribbean Basin Initiative.

There are some red flags to watch out for. One, accumulation. CBI countries should be not counted in with other large-scale exporters whose products unfairly impact United States manufacturers and laborers. If we receive volumes of, for example, cut flowers from a major exporter such as Colombia and decide to take action to restrict the importation of cut flowers or to impose a greater tariff on them, a CBI nation which sends us a fraction of those cut flowers and does not significantly affect the U.S. market should not automatically lose market access.

Two, diversion or circumvention. A major objective of the CBI was to encourage Caribbean Basin countries to diversify into processing industries and to attract investment from other industrialized countries, as well as from the United States. It is important for them to be free to develop these industries without having to be concerned that the goods produced will be denied access to the U.S. market because some of the foreign inputs used in producing them are subject to some form of U.S. trade action.

I would urge this committee to consider imposing restrictions solely on the originating country or to include language specifically exempting CBI beneficiaries from such restrictions.

Three, Presidential waiver. As we tighten our trade laws, the matter of Presidential waiver becomes more important. The CBI was set up to advance our own regional goals through encouraging progress and prosperity in the smaller democratic nations which are our neighbors. Congress should mandate that effective implementation of the CBI is a key objective of U.S. policy. We can do that by requiring the President to take the CBI into account in all decisions which involve a waiver of U.S. trade laws.

In addition to these red flags, Mr. Chairman—red flags to which we must be wary—we now have an opportunity to strengthen this trade initiative and restate our own commitment to its success. We can do that by reconsideration of duration. The CBI is 4 years old. It was originally authorized for 12 years. To assist in achieving the CBI's objectives, we should extend it in 1987 for an additional 12 years, that is to the year 1999.

A leading banker from the Caribbean Basin told me that he makes equipment loans to CBI nations typically based on a 15- to 20-year repayment period. For that banker and for American investors looking to make long-term investments in manufacturing or in other areas—such as travel or tourism—12 years is a reasonable security.

Mr. Chairman, I realize that no one is here intentionally to develop an economic policy that would be counter to United States interest in this important region. To the contrary, we all recognize the importance of a comprehensive United States approach in the Caribbean Basin. I appreciate the openness of the members of this committee and staff to meet with parties interested in the Caribbean Basin issue.

We look forward to sustaining that energy and interest in the opportunities that we and our Caribbean and Central American trading partners share. In that way, we will continue to send our intended message of U.S. friendship and support to neighboring countries whose growing economic strength will enable them to be strong for democracy and strong and stable allies for the United States.

Mr. Chairman, there are two leading members of the Caribbean business community with us today. I would like to recognize Mr. Hector Ladethma, who is president of Banco Populare in Puerto Rico, and Mr. Pat Thompson, the executive director of the Caribbean Association of Industry and Commerce in Barbados.

Mr. Chairman, I would also like to offer for the record an analysis which has been done of the various trade proposals as they relate to impacts on the Caribbean Basin Initiative. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Graham, that is a very helpful reminder to us. You are quite right; no one on this committee wants to do anything that is going to hurt the Caribbean Basin Initiative. In fact, I was the first cosponsor in the Senate for the Caribbean Basin Initiative legislation and yesterday met with a delegation of representatives from that area.

And I do think your point is well taken about the Caribbean Basin Initiative legislation being for a period of 12 years, four of which have expired. Looking at long-term commitments in investments, business people want to know that this Initiative has some life to it so they can recover their capital during that period of time.

I think that is one of the things we should be giving early consideration. We are very appreciative of having you here this morning.

Senator GRAHAM. Thank you.

The CHAIRMAN. Senator Danforth, do you have any questions of Senator Graham?

Senator DANFORTH. Mr. Chairman, I don't, but I was privileged to attend a meeting yesterday in Senator Graham's office with a group of dignitaries who were concerned about the CBI and very interested in extending it further. And I welcome Senator Graham to the committee and also his interest in this very important subject.

The CHAIRMAN. Thank you very much.

Senator GRAHAM. Thank you very much, Mr. Chairman.

The CHAIRMAN. We are very pleased this morning to have the Chairman of the Commerce Committee, the distinguished Senator from South Carolina, Senator Ernest Fritz Hollings, who has introduced a comprehensive piece of legislation concerning trade, and we are delighted to have you comment on it this morning.

[The prepared statement of Senator Graham and the trade analysis paper follow:]

SENATOR GRAHAM ON CBI BEFORE
THE FINANCE COMMITTEE
APRIL 8, 1987

MR. CHAIRMAN....

We have just finished strenuous debate on the merits of continuing aid to the Nicaraguan Contra and what that issue highlighted is that despite our differences, we can agree on two key points:

It's clear we now have an opportunity for a newly-defined and sustained relationship with the countries of Central America and the Caribbean Basin.

We cannot base that relationship on a single tactic -- a comprehensive and broad-based foreign policy must acknowledge our historical, cultural, political and economic ties as well as diplomatic and military options.

The greatest problems of the Central American/Caribbean region are economic. If we are to broaden our agenda to address the real needs of these small nations in our own hemisphere, we must help them to economic stability and development.

In our overall trade picture the Central American/Caribbean nations are relatively small trading partners. The International Trade Commission reports that United States' imports from the countries in the Caribbean Basin Initiative amounted to less than 3% of total imports in recent years.

All 23 countries cumulatively constitute less than 1% of our trade deficit. But the limited preferential treatment we give those CBI nations is vitally important to them.

The Trade Bill raises the concern that our focus on the large trade issues that exist among our major trading partners could lead to an inadvertent slighting of Caribbean Basin tading partners. Unintentional oversight of the impact of major trade legislation on the fledgling and fragile economies in the Caribbean Basin would be a costly mistake.

The Caribbean Basin Initiative recognized the importance of this region to the United States; recognized the importance of stimulating economic growth through private sector initiatives.

We need to be particularly sensitive as we work on the larger Trade Bill -- to the needs of our neighbors to the South -- to the continued viability of the Caribbean Basin Initiative.

There are some red flags to watch out for:

1. Cumulation -- CBI countries should not be counted in with other, large-scale exporters whose products unfairly impact United States' manufacturers and laborers. If we receive volumes of, for example, cut flowers from a major exporter such as Colombia, and decide to take action to restrict the importation of cut flowers or to impose a greater tariff on them -- a CBI nation which sends us a fraction of those cut flowers -- and does not significantly affect the U.S. market -- should not automatically lose market access.

2. Diversion or Circumvention -- a major objective of the CBI was to encourage Caribbean Basin countries to diversify into processing industries and to attract investment from other industrialized countries as well as the United States. It is important for them to be free to develop these industries without having to be concerned that the goods produced will be denied access to the U.S. market because some of the foreign inputs used in producing them are subject to some form of U.S. trade action.

I would urge this Committee to consider imposing restrictions solely on the originating country -- or to include language specifically exempting CBI beneficiaries from such restrictions.

3. Presidential waiver -- as we tighten our trade laws the matter of the Presidential waiver becomes more important. The CBI

was set-up to advance our own regional goals through encouraging progress and prosperity in the smaller, democratic nations who are our neighbors. Congress should mandate that effective implementation of the CBI is a key objective of U.S. policy. We can do that by requiring the President to take the CBI into account in all decisions which involve a waiver of U.S. trade laws.

In addition to these red flags to be wary of we now have an opportunity to strengthen this trade initiative and restate our own commitment to its success. We can do that by reconsidering -- Duration.

The CBI is four years old. It was originally authorized for 12 years. To assist in achieving the CBI's objectives, we should extend it in 1987 for an additional 12 years to the year 1999.

A leading banker from the Caribbean Basin told me that he makes equipment loans based on a 15 to 20 year repayment period. For that banker -- and for American investors looking to make longterm investments in manufacturing or in travel or tourism businesses -- 12 years is a reasonable security.

Mr. Chairman:

I realize no one is here intentionally to develop an economic policy that would be counter to U.S. interests in this important region. To the contrary, we all recognize the importance of a comprehensive United States approach in which the Caribbean Basin Initiative is a major component.

I appreciate the openness of the members of the Committee and staff to meet with parties interested in the Caribbean Basin Initiative. We look forward to sustaining that energy and interest in the opportunities we and our Caribbean and Central American trading partners have.

In that way we will continue to send our intended message of U.S. friendship and support to neighboring countries whose growing economic strength will enable them to be strong for democracy - and strong, stable allies.

Modifications to Senate Trade Legislation to Protect The Caribbean Basin Initiative

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This paper summarizes the principal modifications to "The Omnibus Trade Act of 1987" (S. 490) which are required to maintain the full measure of preferential trade access provided for under the Caribbean Basin Initiative (as granted by the Congress in the Caribbean Basin Economic Recovery Act), and to enhance the security of that preferential access.

1. Import Relief-Investigations Under Section 201

A. Presidential Authority

S. 490 would require the President to take action recommended by the USITC if the Commission makes a unanimous finding of injury. If the USITC determination is not unanimous, the Bill requires the President to provide relief unless he determines that such relief would be detrimental to national security or cause serious injury to a domestic industry.

The CBI Amendment would grant the President discretion to exclude CBI imports from relief, except in those cases where the USITC determines that the relief recommended by the Commission would not be effective unless it were applied to CBI imports.

B. Provisional Import Relief

S. 490 requires the President to impose provisional import restrictions during the investigation if he finds that "critical circumstances" exist. In cases involving perishable commodities, the Secretary of Agriculture may recommend that provisional relief be applied if emergency conditions exist.

The CBI Amendment would give the President discretion not to apply provisional relief to CBI imports if the USITC, in its report to the President indicates that CBI imports have not increased significantly over a short period of time. With regard the perishable commodities, CBI imports would only be subject to a restoration of the MFN rate of duty.

C. Injury Analysis

S. 490 would require the USITC to disregard "captive imports" in making its determinations and would limit the analysis of industry profits to domestic operations.

The CBI Amendment would permit the USITC to take into account the profits derived from imports if those imports qualify for duty-free treatment under the Caribbean Basin Economic Recovery Act.

D. National Security Waiver Authority

S. 490 limits the waiver authority to situations in which relief would be detrimental to the national security.

The CBI Amendment would direct the President to consider the furtherance of the goals of the CBI as in the national security interest of the United States

II. Antidumping and Countervailing Duties

A. Cumulation in Material Injury Findings

The CBI Amendment would address the issue of cumulation as treated in the Trade and Tariff Act of 1984. Based on this statute, the USITC is required to assess cumulatively the volume and price effects of imports from two or more countries of like products subject to investigation.

The modification would direct the USITC not to cumulate CBI imports with other imports in determinations of material injury. If CBI imports are not causing material injury, the case against the CBI country or countries should be terminated.

B. Diversionary Dumping and Prevention of Circumvention

S. 490 would require the Department of Commerce to include in any dumping margin against a product incorporating a dumped input, the difference between the so-called fair value of the input and the cost actually paid for the dumped input.

The CBI Amendment would provide authority for the President to deal with problems of diversion (or other forms of circumvention of antidumping or countervailing duty orders) through negotiation with the country or countries selling the offending input, or through such unilateral action which he deems appropriate. Action against CBI imports would be a last resort.

III. Negotiating Authority

S. 490 would establish four general, and several specific negotiating objectives for future trade agreements.
The CBI Amendment would establish, as a principal negotiating objective, the improvement of the terms of access for CBI products.

IV. Extend the Life of the CBI

The CBI Amendment would extend the life of the CBI. The program would have a twelve year duration starting from the date of enactment of the amendment, and the termination date would be annually extended by one year unless the President determined to terminate the program at the end of the then applicable twelve year period.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. I thank you very much, Mr. Chairman and Senator Danforth. I appreciate being heard by you two gentlemen very, very much. I have filed my statement for the record.

The CHAIRMAN. Without objection, it will be done.

Senator HOLLINGS. I will summarize it very, very briefly to the effect that we have undergone a traumatic change since World War II, Mr. Chairman. I think the whole attitude that we are the only industrialized nation, that we are fat, rich and happy, still persists in Time magazine. They think we will start a trade war. I go back to the early days of the first Congress when James Madison put in the very first formative piece of legislation, Senator Baucus, and it was a tariff bill.

You see, they had a fellow named Ricardo that started that nonsense about comparative advantage, and he thought what the settlers in the New World should do is trade with them—that is, Great Britain or England—with what we produced best, and they in turn would trade with us what they produced best; and there would be no tariffs, there would be no barriers.

And Alexander Hamilton, in his report on manufacturers, said "Bug off." [Laughter.]

Ninety-seven percent of the U.S. population was on the farm, and only 3 percent were in the factories. And so, Madison introduced a tariff bill that said we are going to build up our industrial backbone. You ought to read that report on manufacturing; you will find out, incidentally, that the first bill was a cargo preference bill. We started the trade war in the First Congress, not the 100th.

We came in more recent days with price supports for America's agriculture and protective quotas. We came with subsidies, with the Export-Import Bank; and now, we are putting in bills to help agriculture. Ye gads, we have got more people over in the Agriculture Department than we have got farmers on the farms.

So, we put in Export/Import Bank subsidies. We put in oil import quotas under Eisenhower. What has happened since World War II is that some economies, both in West Europe and Japan and the Pacific Rim have imitated us, and they have used their governments to decrease the cost of production whereby we have used our Government since that time to increase the cost of production. That is hard to get through the political minds up here in Washington; but the fact of the matter is that—in the Pacific Rim and other countries, in West Germany—they have paid for the research; they don't pay for any research in any business around here.

We hope to, Mr. Chairman. I have put in a companion bill in the Commerce Committee to develop our institute of technology, rather than just a Bureau of Standards. We find that at the University of Houston, they have got the superconductor. We will win the Nobel Prize, but the Japanese will win the profits.

Within 48 hours after you announced that discovery down in Texas, the Japanese—within 48 hours—had formed a consortium to commercialize. We do nothing about that.

So, over on our Commerce Committee where we serve together we hope to put in an Institute of Technology and commercialize; give some money for research. That is a separate bill.

But back to the point, the emerging lands after World War II, they paid for the research; they financed the development. The banks in Japan own 43 percent of manufacturing. They give low-interest loans and everything else. They control the domestic market. They have got a fine quality product from American technology, after the end of World War II; and they have put that on a controlled basis on the domestic market and then subsidize, of course, the exports. The car that Toyota sells in Tokyo for $16,000 is $12,000 here in the District of Columbia.

And then, they protect it—after they have targeted those markets—with nontariff barriers. Some people tell me we ought to learn from the Japanese; that is nonsense. The Motorola Corporation has been there for over 20 years; 5 years ago, Motorola was the No. 1 producer of semiconductors. They have less than 1 percent of the Japanese market; they are just not allowed in. They have over 2,000 employees over there who speak Japanese; so let's don't get on to that litany.

Later on, we hear we have to learn from the Japanese; we have to be more competitive. The mentality in the Congress shows we deserve to go out of business. Read the New Republic and these magazine articles for the sophisticated Georgetown drawing room crowd up there. [Laughter.]

And you will understand that we are gone if we don't sober up. Their governments have been used to decrease the cost, whereby since World War II we have put in unemployment compensation and Medicare and Medicaid, clean air, clean water, ERISA, OSHA, safe machinery, safe working conditions; and now we are going to put in maternity leave. We keep adding each year to the cost of production and tell everybody else around, out in the Hinterlands beyond the beltway that they ought to go out of business.

That is the first idea that I would try to extend: that we change our attitude and understand that there have been dramatic changes. You can produce anything anywhere. We don't need retraining. Ye gads, I did that 27 years ago in carpetbagged Boston. We never had an industry leave South Carolina and go up there with Governor Dukakis. I can give him a list that I carpetbagged from that area.

Now, that he has a little bit of retraining up there in lower New Hampshire and Massachusetts, you would think it is something dramatic. It is in Singapore where they are producing electric subassemblies. It is down in Indonesia where Motorola has moved to produce their semiconductors. It is over in Africa where they are producing automobiles. It is down in Brazil where they have got high tech.

You can produce anything anywhere. We came up with that smug attitude that, we will give the emerging Third World the semiskilled, low-skilled textiles and we would make the computers, the semiconductors, the high tech; well, now we have a deficit in the balance of trade in high tech.

We are being colonized. We are going out of business. We are exporting our timber, our coal, our foodstuffs, and we are importing the finished goods, and I have got a long list how they have taken over the domestic production with imports in this land of ours.

In the meanwhile, Mr. Chairman, what we have done is we have lost our different advantages like low-cost energy. We have lost our industrial backbone, as I have pointed out. We did not produce, Senator Baucus, last year much of the food we consumed. We are now a debtor nation for the first time since 1914, and Japan has gotten richer. Can you imagine that in 40 years time? They have got an $18,100 per capita income compared to our $17,700.

It is very interesting. You know, I am not bashing Japan. I hope Hobart Rowan gets into a stitch; he amuses me. I don't believe he has read a book recently to find out what is going on. He ought to join Dave Broder and travel the countryside because we are not bashing Japan. I am trying to bash us—the President, the Commerce Department, the U.S. Trade Representative.

You in this Finance Committee have been spewing out over the last 25 years a lot of foreign trade laws—antidumping, countervailing, section 301, section 202, escape clause, and everything else. They enforce none of them.

So, my bill, in short, is a Trade Enforcement Act. It doesn't mention Japan. It bashes our own administration. It is not different from any Democratic administrations. We had President Carter. We had trouble with that State Department mentality that comes in that thinks that we are still in charge of things. I am glad they have taken over the banks in New York, incidentally. They will sober up now. They are beginning to sort of dispel that Trilateral Commission, you know, and they are beginning to understand that Japan owns 25 percent of the world's financial holdings; 25 percent of the New York funding and 25 percent of California. And they are taking over in every regard and colonizing us. And the Congress has responded, but we haven't enforced.

So, I will list quickly, Mr. Chairman, we have eliminated the exporters sales price offset, which our competitors do; we have extended the coverage of antidumping to downstream dumping. We have got the natural resources subsidies subject to the countervailing duty law. Russell Long, the former chairman, came up with that.

We have put in the Administrative Procedures Act, given the private right of action, used the preponderance of evidence test on appeal, and removed in large measure the President's discretion, which is a political judgment. When we make a finding in the International Trade Commission, it ought to be just as binding. I know that the President disagrees with the Supreme Court's finding on women employees and affirmative action; but he couldn't overrule it. And similarly, we will bring the cases, knowing that once we can go ahead and make a finding at that particular level, it will be enforced. What we did with Zenith is find out it is settled behind our backs at the White House; the *Houdaille* case is settled behind our backs at the White House.

So, why get the lawyers? Why appeal cases? Why aren't there more proceedings to try to level up the playing field?

I have tax credits in here for research, and I see that yellow light; so I will just say I have also added the value added tax. Paul Volcker says the biggest trouble that we have, of course, is the deficit. I proposed a budget; incidentally, we got eight votes in the Budget Committee, bipartisan. Imagine that. The value added tax triggers in in 1989. I have a schedule of taxes or revenues, with holding the corporate tax just at 40 percent for the first year and let the value added take over in 1989. It takes about 18 months, as you know, to install it.

This is a limited value added tax whereby food, housing, health care, farm products, and so forth are exempt; but put in on that limited basis, it goes to Treasury. We hope that the Finance Committee would institute the Trust Fund for Deficit and Debt Reduction at the Treasury Department.

And so, all moneys would go to the reduction of the deficit and the debt. Even if Gramm-Rudman-Hollings worked, you would add another half-trillion on; so you would have $2.5 trillion debt by 1990–1991, and the interest costs run over $200 billion a year. We borrowed $500 million at 8 this morning; we will do it again Friday morning and Saturday morning and Sunday morning—right along.

So, we have to do better. We have to quit spending our children's and our grandchildren's money and start spending some of our own; but I put that in there because that is a key measure of a trade bill and a real matter of interest to this Finance Committee.

Let me stop there and try to answer any questions you might have.

The CHAIRMAN. Senator Hollings, thank you.

Senator HOLLINGS. I apologize for going over my time.

The CHAIRMAN. No, no. You have a deep interest in this issue. You have worked at it a long time, and you have some very strong views about it. We are very pleased to have your testimony. I know it is a very comprehensive and extensive bill, and we will be happy to give it serious consideration. There are many things that are compatible in our legislation.

You have gone beyond it in some areas. One of the things that we have in our legislation to which you referred is that time and time again we have had Administrations that have done these things and negotiated without consulting this committee or the Senate or the Congress; and then faced us with a fait accompli—take it or leave it. Brinkmanship. That is what we are trying to avoid in this legislation, where we require some consultation along the way to show that we are working together in a united front in dealing with our competitors, in trying to arrive at similar solutions, and in trying to knock down some of these nontariff barriers.

But I agree with many of your statements concerning where we are headed and how important it is that we turn this around. Senator Danforth?

Senator DANFORTH. No questions, Mr. Chairman.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. No questions, Mr. Chairman.

The CHAIRMAN. It looks like you sold the crowd.

Senator HOLLINGS. I wish I had. [Laughter.]

The CHAIRMAN. Thank you very much for your testimony.

Senator HOLLINGS. Thank you very, very much, Mr. Chairman. I thank you all.

The CHAIRMAN. In our first panel, we have Mr. William Archey, the vice president-international of the U.S. Chamber of Commerce;

Mr. Calyman Cohen, vice president of the Emergency Committee for American Trade; and Mr. Arthur Gundersheim, assistant to the president, Amalgamated Clothing & Textile Workers Union of the AFL–CIO, on behalf of the American Fiber, Textile, Apparel Coalition, the American Iron & Steel Institute, the Leather Products Coalition, the Rubber & Plastic Footwear Manufacturers Association, the Specialty Steel Industry Association of the United States and the Group of 33. That is pretty impressive. Our first witness to lead off is Mr. William Archey, if you will, please?

[The prepared statement of Senator Hollings follows:]

TESTIMONY OF SENATOR ERNEST F. HOLLINGS
BEFORE THE SENATE FINANCE COMMITTEE
APRIL 8, 1987

Mr. Chairman, I have two overriding purposes in appearing before the Finance Committee this morning: To impress upon my colleagues the urgency of the trade crisis confronting our nation; and to point up the tragic disparity between the magnitude of the threat facing our nation and the modesty of most of the solutions heretofore proposed.

Last week, after the President slapped Japan on the wrist for dumping microchips, the media caterwauled about "fears of a trade war" and the "threat of a trade war." This week, TIME magazine has escalated the hysteria, quoting a Tokyo TV commentator who described the chip retaliation with the phrase "Kaisen zen-ya" -- "the eve of war" -- an expression used in Japan to describe the days before Pearl Harbor. What nonsense.

This latest outrage is not a trade war. It is just one more trade skirmish. The larger war has been raging for years now. What's new is that our government -- in this one instance -- has summoned the moxie to fight back.

Mr. Chairman, I repeat, the United States today is at war -- an international trade war in which, shamefully, we are only now beginning to fight back. As is the fashion in recent years, this war has remained undeclared. But the reality of the conflict cannot be denied. Nor, in the face of last year's $170 billion trade deficit, can we deny our surrender, our abject passivity in the face of a determined onslaught from abroad.

Tragically, this trade war is being fought principally on American soil. Its toll is evident not just in the laboratories of Silicon Valley, but in abandoned oil rigs, failing farms, and vast defeated armies of the unemployed.

To illustrate the magnitude -- the sheer breadth -- of the beating our nation is taking, consider the domestic market share that has been seized by foreign producers in recent years. Within our borders, foreign companies now sell:

-- 42 percent of semiconductors
-- 55 percent of apparel
-- 81 percent of footware

-- 48 percent of telephone equipment
-- 46 percent of machine tools
-- 28 percent of automobiles
-- 63 percent of motorcycles
-- 38 percent of photo-finishing equipment
-- 90 percent of 35mm cameras
-- 100 percent of black and white TVs
-- 100 percent of consumer radios
-- 23 percent of steel
-- 66 percent of ferroalloys
-- 27 percent of copper
-- 38 percent of oil
-- 31 percent of lumber
-- 50 percent of musical instruments
-- 41 percent of toys and games
-- 70 percent of fruit juices
-- 67 percent of microwave ovens
-- 85 percent of watches
-- 28 percent of sporting goods
-- 28 percent of power tools
-- 45 percent of chinaware
-- even some $9 billion in military equipment
   is purchased from foreign sources.

As this appalling litany illustrates, no sector of the U.S. economy has been spared the devastation: not agriculture, not manufacturing, not high tech. This is a very real war, with very real casualties. And what we need is a real response, a national mobilization led by the President and Congress.

Instead, the Administration continues to indulge in the conceit that international commerce is governed by something called "free trade" -- a wonderful, objective, rational system that rewards the efficient and punishes the slothful. The "free trade" theoreticians lecture us that foreign products are more efficient and therefore deserve to take over the U.S. market.

Echoing the President's preachments and homilies on "free trade," the media raise their editorial voices in a great hallelujah chorus of agreement. Typical is a recent lead editorial in The New Republic; it pronounces grandly: "If foreign workers can make a product more cheaply than we can, it is to our benefit to stop making it here, and to buy it from them." This is the reductio ad absurdum of the free trade argument; by carrying the argument to its logical conclusion, its absurdity is revealed. After all, as a practical matter, what product cannot be made more cheaply abroad? Does The New Republic advocate that we simply disband American industry -- lock, stock, and barrel?

Mr. Chairman, this is an insult to American industry and the American worker. According to the Bureau of Labor Statistics, U.S.

workers rank first in the world in productivity; Japanese workers rank only eighth. America is hungry to compete. We have the talent and the toughness. All we lack is a government as eager to compete as we are.

This Administration preaches a childlike faith in the "invisible hand." Meanwhile, our trading partners pursue a policy of the iron fist. Their nations are citadels of tariffs and barriers to trade. They gang together in consortia and cartels and "common markets" to protect their own industries and to plunder America's.

As an importing nation, America has indulged in a promiscuous accommodation of all comers. We have practiced free trade like some people practice free love; and in the process we have lost our self respect, our economic health, and -- to a frightening degree -- our national sovereignty.

The choice is not between free trade and protectionism. Every nation practices protectionism. As a matter of national interest, each country draws a line beyond which it will not permit foreign penetration and plunder. This notion may sound like heresy to the Reagan Administration, but it is just elementary common sense to the rest of the world.

On that score, Mr. Chairman, I would note that one of the earliest acts of the First United States Congress -- on July 4, 1989 -- was enactment of tariff legislation in response to dumping of goods by Great Britain. Indeed, this was the first substantive legislation of the First Congress. The measure -- championed in Congress by James Madison -- levied duties ranging as high as 50 percent on some 30 commodities, including steel and tobacco.

Washington, Madison, and Hamilton all agreed that it was a legitimate and necessary responsibility of the new government to invigorate and protect American commerce and America's growing manufacturing ability. When Washington took the oath as our first President, he dressed in a suit of Connecticut-manufactured broadcloth, and he expressed the hope that before long it would "be unfashionable" for gentlemen to appear in any other dress. President Washington made a point of serving only American-made beer and cheese in the Presidential house.

I repeat, Mr. Chairman, the question before us is not whether we should draw a line to defend our domestic market. The question is where to draw the line. On that score, I must respectfully express my concern that the legislation proposed by the Chairman of this committee does not adequately address the crisis that confronts us.

There is no question that Sen. Bentsen's bill would be an improvement over the existing situation. It is a serious legislative proposal. Yet I fear that it offers mostly paliatives and salves, while the disease cries out for surgery.

I do not intend to belabor the Chairman with an extended critique of his bill. I am here to outline my own proposals as embodied in S. 891, the Trade Enforcment Act of 1987, and to respond to your questions. However, permit me one important observation.

A key factor in our disastrous predicament is the President's repeated -- indeed, consistent -- failure to enforce the trade laws already on the books. Again and again, we have witnessed his willingness to avert his eyes or turn the other cheek when confronted with the transgressions of our trading partners -- all in the name of "free trade."

Yet this committee's bill would preserve virtually intact the President's discretionary authority, his freedom of action or inaction in the face of violated trade agreements. Given the track record of this Administration, this is an open invitation to continued footdragging and obstruction.

In contrast, my own bill would place clear limitations on Presidential discretion in section 201 and 301 cases. I say: Take the politics out of trade law enforcement. Ensure that enforcement will be swift and certain, and not a matter for endless temporizing and bickering. Remove any loopholes that would allow the "free trade" bureaucracy to step in and obstruct the efficient enforcement of our agreements. In the process, we will put teeth in the laws already on the books, and avoid the need for more stringent legislation.

Having said that, let me emphasize the following: My proposed legislation is not aimed at any specific country. It is not Japan bashing or the bashing of any other nation. On the contrary, the target of this bill is our own government, specifically, the President, the U.S. Trade Representative, and the Departments of Commerce and State: I want them to do their duty and enforce the law.

This bill is not punitive. It involves no new tariffs. The whole objective is simply to strengthen the discipline and enforcement behind existing trade laws.

Mr. Chairman, permit me to review briefly the other major elements of the Trade Enforcement Act:

0 Improvements in anti-dumping and countervailing duty laws designed to stiffen enforcement. Many of these changes are patterned on the practices of our major trading partners.

0 A provision to ensure that persons or firms convicted of two or more customs violations within seven years are barred from importing into the U.S.

0 Restructuring of the import relief process to remove discretion from the President and make enforcement automatic by the International Trade Commission.

0 Requiring approval by Congress of tariff concessions made by the United States pursuant to trade agreements.

0 A tighter procedure for implementation of our textile import program.

0 Reform of export control laws. The Commerce Department would be required to produce a comprehensive survey of foreign availability. This report and periodic updates would alert the President to products and technologies for which a license was denied, but that are widely available. The export licensing procedure would be amended to shorten time limits by half.

0 Creation of a cabinet-level National Trade Council in the Executive Branch with a National Trade Advisor assigned responsibility for coordinating trade policy.

0 Encouragement of investment in research and development. The bill offers two tax credits for R & D. First, the credit against tax for R & D would give qualified businesses 6 percent for basic research, 6 percent for qualified research, and 6 percent for qualified development expenses. Participants would be able to claim up to 18 percent total credit on current R & D expenditures. The bill also permits small businesses to claim an additional 6 percent credit for start-up expenses.

0 Ending the deductibility of interest paid on funds borrowed to purchase the stock of any corporation in which the taxpayer

controls more than 10 percent of the outstanding stock.

0 Imposition of a 10 percent value added tax, plus shifting the transaction value of customs duties from an F.O.B. (free on board) to a C.I.F. (cost, insurance, and freight) basis. Revenues from these two provisions will be earmarked exclusively for deposit in a trust fund to pay the principal and interest on the national debt.

Mr. Chairman, I offer the following extended analysis of the four bills before this committee -- H.R.3, S.490, S.636, and S.891 -- and how they approach the principal trade challenges:

Antidumping and Countervailing Duty Laws

In 1985, the Administration attempted to measure the amount of lost sales by U.S. companies resulting from unfair trade practices of foreign countries, such as dumping and subsidization. Mr. Charles Blum, the Assistant U.S. Trade Representative, stated that "current estimates suggest that unfair practices could account for as much as $20 billion in lost sales" for American companies per year. One would expect, therefore, that the administration of these laws would be carried out in an aggressive and conscientious manner. Unfortunately, this has not been the case. The agency charged with administering these laws, the Department of Commerce, has chosen, in interpreting the antidumping and countervailing duty laws, to adopt interpretations that provide the least protection possible to American companies, and the most protection to unfairly-traded foreign imports. The courts have often held that its interpretations are contrary to law. A primary objective of any trade bill must be to strengthen these laws by removing any ambiguity regarding a number of key issues, so that the Department has no choice but to provide American industry with the protection the law is already supposed to provide.

Each of the three bills before the Committee contains worthy amendments to the antidumping and countervailing duty laws. The duty law created by the Department of Commerce, the so-called "general availability test." Basically, under this test, the more widely available a foreign government makes a subsidy, the less likely it is to be found countervailable. The Court of International Trade held in Cabot Corp. v. U.S. that this interpretation is contrary to law. A direct prohibition of this test is one step we could take to make the countervailing duty laws more effective.

Similarly, each bill would improve the antidumping laws, most significantly through provisions addressing the problems of diversionary dumping, and of dumping by non-market economy countries. They do not contain, however, equally important improvements to the law that could be made by clarifying how the United States and foreign prices of merchandise are calculated, and what the scope of an antidumping order includes. Such provisions, which are contained in S. 891, may appear simple technical changes, yet they can greatly increase the protection the law provides American industries against dumped merchandise.

S. 636 and H.R. 3 contain a provision that would measure the extent of dumping by a non-market economy by comparing the price at which its products are sold in the United States to the lowest average price of the same product from a comparable market economy. By assuming that non-market economies are the most efficient producers in the market, which is almost never the case, the law would in effect give these countries a license to dump. Changes such as these weaken the unfair trade laws, and make it more rather than less difficult for American industry to compete against unfair foreign trade practices.

Four additional changes would enable the unfair trade laws to provide more effective relief. As dumping causes economic injury to American firms, companies injured by dumping should be entitled to sue for compensation. S. 891 contains a provision creating such a private right of action. In addition, S. 891 and H.R. 3 impose "scofflaw" penalties which would punish foreign exporters that have consistently engaged in dumping or the sale of subsidized merchandise. Finally, the standard for judicial review of antidumping and countervailing duty determinations should be changed. Under current law, if the agency's decision is supported by "substantial evidence on the record," the decision must be affirmed. The courts have shown unwarranted deference to the decisions of the Commerce Department, so that as a practical matter, if there is any support for their decision at all, it will be upheld. Changing the standard of review will force the courts to determine whether in fact the agency's decision was the correct one. Finally, application of the provisions of the Administrative Procedure Act to antidumping and countervailing duty investigations will provide the participants with greater procedural safeguards. It will ensure that determinations are made by independent administrative law judges, rather than by the same persons who are conducting the investigation.

Another common form of unfair trade is the importation of goods that infringe United States patents or copyrights. Under current law, such goods may be excluded only if the International Trade Commission finds that they have injured a domestic industry. All three of the bills being considered, as well as my bill, would eliminate the injury requirement for imports infringing valid patents, copyrights, trademarks, or mask work rights. The unanimity of the bills in this regard is the best evidence of the desirability of this change in the law.

SECTION 301

Section 301 of the Trade Act of 1974 provides another weapon against unfair foreign trade practices. In theory, section 301 could be a powerful instrument of United States trade policy. However, the General Accounting Office has found that since 1974, of the 53 investigations begun by USTR, 23 cases have been terminated, 16 cases are relatively inactive and 14 cases are relatively active. USTR claims 26 section 301 cases have resulted in open markets, but GAO found that implementation of agreements reached under 301 does not always occur. GAO further noted that petitioners for 301 action seek elimination of the unfair practice. USTR may regard as successful, agreements which improve trade relations, but do not remove the unfair trade practice.

Not surprisingly, reform of section 301 is a goal of S. 490 and H.R. 3. H.R. 3 seeks to make section 301 a more effective means of protection for American industry by transferring from the President to the United States Trade Representative the authority to make determinations as to whether rights of the United States under international agreements have been infringed, or whether actions by foreign countries constitute an unreasonable burden on

United States commerce. I fear this is a change in form rather than substance. The USTR is of course a part of the Executive Office of the President, so that there is no reason to believe that decisions by the USTR would be any less political than those made by the President. H.R. 3 and S. 490 would also require the President to retaliate under some circumstances. They would leave the form of action to the President's discretion. This leaves open the possibility of decisions made on purely political grounds, and could allow the President to avoid taking meaningful action, if he so chooses.

If section 301 is to be a truly powerful means of protecting American economic interests world-wide, action under it must be mandatory in both application and method. S. 891 proposes to transfer the authority to make decisions under section 301 from the President to the International Trade Commission, an independent agency with enormous expertise in the field of international trade. The ITC would determine whether foreign acts satisfy the criteria for retaliation under section 301. If they do, the ITC would employ its expertise to determine what form retaliation should take. At the same time, the USTR would begin consultations with the foreign country to end the offending practice. Unless the United States and the foreign country reach an agreement that completely terminates the offending practice, the President would be required to implement the determination of the ITC. In the meantime, provisional measures would apply, so that foreign countries would have every incentive to come to a negotiated settlement.

This change in the law would ensure that industries that deserve protection under section 301 receive that protection. It would also provide a powerful bargaining chip for the United States, as the foreign country committing the practice would know that, unless it reached an agreement, retaliation would inevitably occur. The provision for negotiations would leave the President a great deal of power in dealing with the situation; the requirement of mandatory action would ensure that the interests of a domestic industry are not sacrificed for political expediency, or for a commitment to an idealized notion of free trade.

TRADE NEGOTIATIONS

A major feature of ~~all three of the bills~~ S. 490, H.R. 3, and S. 636 is a renewal of the President's authority to negotiate tariff concessions. All three bills provide the President with clear objectives for these tariff negotiations. That widespread reductions in tariffs increase international trade, to the benefit of all countries, is incontestable. However, it is the objective of neither the General Agreement on Tariffs and Trade, nor United States policy, to bring about tariff concessions that disproportionately injure certain United States industries. Obviously, any tariff concession will leave the industry producing the product open to more foreign competition. Some industries are more able than others to withstand such competition. Any grant of proclamation or tariff-negotiating authority to the President should be limited.

The surest way to avoid concessions that will have a disproportionately injurious effect is to provide a mechanism for speedy review of concessions by Congress. S. 891 would provide that any tariff concessions proclaimed or negotiated by the President would automatically take effect unless ~~both Houses of Congress passed~~ a joint resolution was passed disapproving of a concession. This would allow Congress some say in tariff negotiations.

SECTION 201

Some domestic industries seriously injured by imports require temporary relief. Although such relief is available under the escape clause, section 201 of the Trade Act of 1974, the Administration has often decided not to grant relief, even though the International Trade Commission has recommended relief. In a March, 1987 report, GAO found that in the 60 cases filed under 201 since 1974, the President has provided the same relief recommended by the ITC in only 3 cases. In 12 of the 33 cases where the ITC recommended relief, the President provided no relief, and in 11 cases the President decreased the level of relief. These facts are reflected in the declining use of 201 by U.S. industry. In 1986, only one petition for relief was filed.

H.R. 3 and S. 490 would make some changes to section 201. The procedures set forth in these bills for import relief for perishable products are sound. Neither bill, however, confronts the central obstacle to the provision of import relief, namely, the fact that the President or USTR remain free, in certain cases, to alter the relief recommended by the ITC, or ignore its recommendations completely. H.R. 3 would shift the authority to implement relief from the President to the USTR, but as I noted before, this actually changes nothing. If the escape clause is ever to provide the relief intended, implementation of the recommendations of the ITC must be mandatory. That agency possesses precisely the expertise needed to make such recommendations, so that an affirmative decision under 201, coupled with the agency's recommendations, constitute the best studied judgment as to what is necessary to provide a domestic industry with the relief it needs to adjust to import competition. The amendment of section 201 to achieve this result, as proposed by S. 891, when coupled with a clarification of the factors the ITC is to consider in defining the domestic industry and in determining whether injury has occurred, would constitute a great stride towards converting the escape clause into an efficient means of helping United States adjust to import competition.

A related area of necessary import relief involves trade in textiles. The Committee is well aware that earlier this year, I introduced S. 549, a new textile bill. The present system, if it continues to be used, needs to be reformed and made statutory. The bill provides for petitioning the Committee for the Implementation of Textile Agreements -- CITA -- for relief. There are presently no rules controlling CITA's response nor a requirement that it respond at all. None of the bills being considered address this problem. The creation of procedures for filing petitions with CITA, and the requirement that CITA act within a set period of time, would give American textile and apparel manufacturers the full benefit of the agreements concluded on their behalf, without erecting any new barriers to trade. S. 891 also requires all new bilateral agreements to contain a provision for export permits to help detect overshipments and fraud.

INCREASING EXPORTS

Protecting American industries from import competition, especially unfair competition, is only part of a national trade policy. It is equally important that we make it easy as possible for American industries to export their goods. The United States has traditionally been the world leader in high technology. This advantage has not necessarily translated itself into exports. We are all aware that our national security demands that certain types of technology not be exported. Often, the legitimate interests of national security have given way to an overly strict approach to export regulation that costs the United States exports and jobs, without enhancing our national security in any way. This is the conclusion of the National Science Foundation, which recently completed a painstaking review of the export controls the United States has in place, and the effect of these controls. The Foundation concluded that national security export controls cost the United States over $9 billion and 188,900 jobs in 1985. If the United States is to reap the benefit of our technological prowess, we must do a better job of reconciling the twin interests of national security and economic prosperity.

H.R. 3 contains a number of worthy provisions that would improve our system of export controls, particularly regarding foreign availability of technologies and the termination of requirements of licenses for "low technology" products. Further measures are needed. Under the law, export controls do not normally apply to technologies that are available from other countries. S. 891 would direct the Secretary of Commerce to undertake a comprehensive review of products and technologies which are currently available. Such a report would be required every 2 years thereafter. Additionally, the licensing procedure itself is a discouragement to exports. It simply takes too long to obtain a license. The present licensing procedure can be expedited so that would-be exporters will know that they can obtain a decision on their license application within a relatively short time.

NATIONAL TRADE COUNCIL

Given the importance of international trade to our economic prosperity and national security, there is really no central organ of government formulating and coordinating trade policy. In introducing S. 891, I likened international trade to a hard-fought football game. If that is so, the behavior of the United States in making trade policy resembles nothing so much as a group of schoolboys, scratching plays in the dirt, while the other teams have uniforms, coaches, and detailed playbooks. We cannot continue this casual approach to international trade policy.

S. 891 would create a National Trade Council, composed of the President, the Vice-President, a number of departmental secretaries, and the U.S. Trade Representative. There would be a National Trade Advisor with a small staff at the White House. The Council can play an invaluable role in developing a comprehensive trade policy for the United States, and in overseeing the implementation of that trade policy by the multitude of responsible agencies.

ENHANCING COMPETITIVENESS

"Competitiveness" has become something of a buzzword over the last few months, and each of the three bills contains provisions seeking to enhance competitiveness. The focus of the competitiveness provisions of S. 490 is to provide direct assistance to workers and companies that have been adversely affected by foreign competition, and to provide funds for retraining workers in industries that are no longer competitive. S. 636 similarly provides for expanded assistance to workers in sunset industries. H.R. 3, as introduced, employs another approach, providing for funding of direct training for workers, for improvement of postsecondary education in mathematics and sciences, and for modernization of research facilities in colleges and universities.

None of these bills provide the sort of direct incentives that are necessary to enable American business to invest in the technologies and facilities that are necessary to restore us to international competitiveness. In particular, they do not address the need for increased expenditures by business for research and development. Research, and the development of the fruits of research into actual products, are the keystone of future competitiveness. Of late, civilian R & D expenditures in the United States have lagged far behind those of Japan and West Germany, and the results are plain for all to see. Money cannot replace genius, but often without adequate funding, genius can go unfulfilled. Unless more funds are made available for research and development expenditures, the United States will fall still further behind its international competitors.

S. 891 seeks to correct this situation by expanding the tax credit available for research and development expenditures. Under my bill, businesses would be able to claim a 6% credit for basic research expenses, 6% for qualified research and another 6% for qualified development expenses. Tax credits totalling 18% of R & D expenditures would be a powerful incentive for firms to invest in research and development. The bill would provide special assistance to small businesses, which are often the source of the most creative ideas, but which often lack the means to turn those ideas into reality. A tax credit of 6% ~~of~~ for qualified research and development product expenses would be available to businesses with revenues of less than $1,000,00 per year. These credits will entail an initial loss of tax revenues, but they will more than pay for themselves in the future through increased revenues arising from healthy and competitive industries.

While tax credits play a major role in encouraging investment in research and development, they are little use to many of the small businesses that need help the most. Therefore, I have introduced the "Technology Competitiveness Act of 1987" creating programs in the Commerce Department for small businesses.

The bill has a two-part program to assist companies to commercialize scientific discoveries. The Commerce Department would provide awards to small businesses developing important civilian technologies; and the Secretary of Commerce would provide "seed money" to encourage multi-company joint research ventures in key technical areas.

The bill authorizes a one-time leaseback program. The program would purchase robots, flexible manufacturing systems, and other equipment and then lease them to qualified businesses. Finally, the bill would create a new "Product and Technology Administration" to strengthen the management of the Department's technology programs.

RESTRICTION ON MERGERS AND ACQUISITIONS

Many American companies have the ability to take advantage of new technologies, but lack the funds to do so. They would make good credit risks, but find that the banks prefer to use their money in other ways. We are familiar with the merger mania that seems to be sweeping the nation. Mergers or acquisitions may represent an efficient redeployment of assets that benefits stockholders, workers, and communities. All too often, however, these transactions are undertaken with an eye for fast profits, and without any regard for their long-term effects. Instead of going into new facilities or research, the money is simply shifted from one pocket to another.

In 1986, much more money went into funding mergers and acquisitions in the United States that was invested in new facilities or technology. Most of this money was borrowed from banks or other commercial institutions. Still more money was spent by corporations trying to fend off unwanted purchasers. Money used to fund a leveraged buy-out, or to block one, is money that is not available for another, more productive use. In our free-enterprise economy, the government does not forbid such transactions. It can, however, act to ensure that it does not indirectly encourage them. One of the things that make many mergers or acquisitions possible is the deduction allowed for the interest paid on the borrowed funds that are usually indispensable to the transaction. S. 891 attacks this problem by prohibiting the deduction of interest used to purchase stock in a corporation, if the purchaser owns or controls, directly or indirectly, more than 10% of the corporation's stock.

REDUCTION OF THE BUDGET DEFICIT

The weakness of our trade laws is only one cause of the decline in our international financial position. Another important cause is the ballooning budget deficit. So long as the deficit remains at current levels, American business will be denied the funds it needs to invest in research, development, and modernization. Any trade policy that does not address the budget deficit cannot be completely successful.

Reduction of the deficit will entail cuts in expenditures. Such cuts are already being made, through the mechanism created by Gramm-Rudman-Hollings. But it is unrealistic to believe, as the Administration does, that budget cuts alone will erase the deficit. The amount needed to fund vital programs is simply greater than the revenues available. If programs cannot be cut, then revenues must be increased.

S. 891 proposes the imposition of a value-added tax (VAT) on all goods and services sold within the United States of 10%. To avoid a tax that would weigh disproportionately on the poor, the retail sale of food and nonalcoholic beverages, medical expenses and residential housing would be exempt. Nor would there be any tax on sales by farmers or fishermen, on mass transit services, or on exports. It is estimated that this VAT would raise revenues of $85-$120 billion per year.

It would increase the cost of all imports, as imports would naturally be subject to the tax. At the same time, it would spur exports, as exporters would be eligible for a rebate of the value of the VAT. This would decrease the price of American goods overseas, making them more competitive in foreign markets.

A change in the way customs duties are calculated would also raise revenues. Currently, the United States collects customs duties on the Free on Board (FOB) value of a good. ~~Most~~ Many countries in the world levy duties on the basis of the Cost, Insurance, and Freight (CIF) price. A shift to CIF basis for duties would raise revenues of approximately $2 billion per year.

The increased revenues, through the imposition of a VAT and by the change in the basis of customs valuation, should not be treated as an excuse for increasing government spending. The sole purpose of these taxes must be to reduce the debt and the deficit. Therefore, S. 891 provides for the creation of a Deficit and Debt Reduction Trust Fund, into which these revenues would be deposited. The proceeds of this fund shall be available only for payment of interest and principal on the national debt.

CONCLUSION

The changes I have described above are sweeping. If adopted, they would go far in restoring the United States to international competitiveness. I would stress that none of these changes should be considered "protectionist". They target no particular countries for action. They would create an entire economic environment that would allow us to channel our precious resources into their most productive uses.

Honda Rimei, an 18th Century Japanese philosopher wrote, "Foreign trade is a war in which each side seeks to extract wealth from the other." The United States is at war right now. We are at war with many of the countries with which we are most closely allied politically. The outcome of the war will determine the fate of our standard of living.

International trade is different from war in one key respect -- there need not be a winner and a loser. In international trade, everyone can win -- but only if everyone competes at the peak of their abilities. In international trade, over the last few years, the United States has performed nowhere near its best. This is not because we are not as smart as the Germans, or as diligent as the Japanese. Our failure lies rather in our refusal to see that the world itself has changed. We cannot shut the rest of the world out. Nor can we continue along in our old ways, hoping that the "magic of the market" will somehow restore us to our former prosperity. We must work harder, but more importantly, we must work _smarter_, and we must work _together_. Laws alone cannot accomplish this result, but without good laws, they cannot be accomplished at all.

Mr. Chairman, we do not intend to slam the door on legitimate imports. But neither do we intend to go on being the doormat of the world trading community. And doormat we are -- in industry after industry. The assault on America's economic infrastructure is across the board -- from manufacturing to agriculture to high-tech and even to services.

The time has come to draw a line. American workers are eager to compete. American industry is eager to compete. Accordingly, we in government must be equally resolved to compete.

Through the Trade Enforcement Act of 1987, Congress has the opportunity to speak up for the American people. And let the world hear our message loud and clear: We intend not only to compete. We intend to win.

# # #

STATEMENT OF WILLIAM T. ARCHEY, VICE PRESIDENT, INTERNATIONAL, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. ARCHEY. Thank you, Mr. Chairman. My testimony today will address major provisions in the House, Senate, and administration's bills, and I would like to request that my full statement be entered in the record.

The CHAIRMAN. It will be.

Mr. ARCHEY. And also, as a supplement to it, our U.S. Chamber of Commerce Guide to Trade Legislation.

The CHAIRMAN. We are pleased to have it.

Mr. ARCHEY. I will not get into all of the details of the specific provisions. We will leave that for a question and answer period; but what I would like to do is address generally the three bills and also to provide some prefatory remarks. The Chamber of Commerce believes that the enactment of constructive trade legislation this year can contribute significantly to correcting some of our trade-related problems.

We, however, also note that we have to be realistic about what trade legislation can or cannot do. Major macroeconomic issues such as the budget deficit, growth rate, differentials, tax structures, exchange rate instability, and Third World debt present challenges not readily resolved through trade legislation. The cost of capital alone in the United States is also considerably higher than it is in many of our trading partners, particularly Japan.

However, the Chamber of Commerce, on behalf of its members, is convinced that there is a need for responsible trade legislation that could have a positive impact on America's international trade competitiveness. New trade legislation, as well as aggressive implementation of existing trade law, can provide important incentives for U.S. business to remove disincentives to export and aggressively combat the unfair trade practices of our trading partners, but without becoming protectionist.

Our basic contention remains that increased competitiveness for U.S. business can be accomplished through more open, liberalized trade around the world; but we are also convinced that this requires the opening of markets by all of our trading partners and an equal commitment on their part to avoid resorting to protectionist measures which keep foreign products out or serve to otherwise put competitive foreign products at an unfair disadvantage.

This necessarily involves a demonstration of U.S. Government will, to show our trading partners that we mean business and will take strong action when the legitimate export interests of U.S. companies are unfairly impeded by other countries. At the same time, we note that we must be prudent and cautious in our use of retaliation. We must avoid taking such steps which will, in the end, prove actually detrimental to our national economic interests.

Given those remarks, I would just like to quickly comment on the three bills.

The Senate Omnibus bill appears to be predicated on the following assumptions. The existing trade law is inadequate to counter foreign unfair trade practices. The Administration's response to such practices has been inadequate; therefore, the need for tougher mandatory retaliation provisions. And Congress should be more involved in the development and implementation of trade policy.

These underlying assumptions have led to a range of provisions in S. 490, some of which the Chamber supports, others to which the Chamber objects. There are several aspects of the Senate bill which we believe are useful and important. For example, on section 301, we support mandatory retaliation if there is a trade agreement violation. We also agree with the intent of the Senate provision which shortens the time for resolution of a Section 301 case.

The Chamber also supports in principle the inclusion of targetting as an actionable 301 practice. We are also pleased with the provisions to strengthen the intellectual property rights protection, the inclusion of multilateral negotiations in any trust relief as an additional relief option under section 201. I would also note, Mr. Chairman, that we also endorse most, if not all, of the changes that are being made in the National Trade Estimates Report whereby the Government will be forced to identify those practices which are the most serious, particularly those which are unjustifiable and are in violation of a trade agreement.

At the same time, we believe that the Senate bill goes too far in reducing the President's discretion and mandating executive branch action in response to unfair practices, in the number of unfair practices which require retaliation, in limiting Presidential flexibility with respect to granting import relief under section 201, and in new conditions imposed on the President in order to enter into trade negotiations and conclude a trade agreement.

As introduced, the House bill was identical to H.R. 4800, which passed the House in the last session of Congress. While H.R. 3 reflects a similar dissatisfaction with the effectiveness of current law to counter foreign unfair practices and the Administration's response to those practices, it does so less dramatically than the Senate bill.

The House bill does less to circumscribe Presidential discretion and flexibility in the following areas. Section 301, the granting of negotiating authority, and the provision of relief under section 201. There are a number of provisions in H.R. 3 as originally introduced and as reported by the Ways and Means Committee which the Chamber endorses: mandatory retaliation when trade agreements are violated, strengthened intellectual property rights protection, strengthened telecommunications market access provisions, clarification of the Foreign Corrupt Practices Act. We also endorse most, if not all, of the changes in the export control area in the House bill. H.R. 3, however, does contain a number of provisions which the Chamber believes are not in the national economic interest.

In proposed changes to section 301, the House bill transfers authority to initiate 301 cases from the President to the USTR, which we believe does not contribute to the improved administration of the 301 statute. Perhaps the most objectionable provision in the House bill is that which requires retaliation against trading partners with "excessive and unwarranted" trade surpluses, to so-called Gephart Amendment. The Chamber is also opposed to the House proposal which would make the violation of internationally recognized workers' rights actionable under section 301.

In contrast to the House and Senate bills, the Administration's bill is essentially based on two principles.

The CHAIRMAN. Mr. Archey, I will have to ask you to summarize.

Mr. ARCHEY. Right. The Chamber believes that the Administratior's bill does not go far enough, particularly in section 301. We also don't think it goes far enough in terms of its 24-month deadline in reducing the time for a GATT determination. We do support a number of provisions, such as their provisions on negotiations, intellectual property rights, and other provisions. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Archey. Mr. Cohen?

[The prepared statement of Mr. Archey follows:]

STATEMENT

on

THE TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987 (H.R. 3)

THE OMNIBUS TRADE ACT OF 1987 (S. 490)

and

THE INTERNATIONAL ECONOMIC ENVIRONMENT IMPROVEMENT ACT OF 1987 (S. 636/S. 539)

before the

Senate Committee on Finance

for the

U.S. Chamber of Commerce

by

William T. Archey

April 8, 1987

Mr. Chairman and members of the Committee, I am William T. Archey, Vice President, International, of the U.S. Chamber of Commerce.

We appreciate the opportunity to testify on S. 490, H.R. 3 and Title II of S. 636.

My testimony today will address major provisions in the Senate, House and Administration bills. As a supplement to my testimony, I would like to request that a copy of the U.S. Chamber's detailed side-by-side comparison of the key provisions in each of these bills be inserted into the record. This Guide to Trade Legislation in the 100th Congress has been prepared for use by our members and others actively interested in these issues. While it does not cover every provision in each bill, we think it gives readers an excellent understanding of the key proposals being discussed. It also includes an analysis of the Co-Chairmen's Mark of H.R. 3, proposed by Chairmen Rostenkowski and Gibbons. (Please note that our side-by-side presentation of the Administration's proposals is based on Title V of S. 539 rather than Title II of S. 636).

The U.S. Chamber believes there are three central objectives to the formulation and execution of international trade policy which should be the guiding criteria for trade legislation:

1. To improve the ability of U.S. firms to compete internationally by pressing for the elimination of foreign tariffs and non-tariff barriers to U.S. trade and investment.

2. To improve the ability of U.S. companies to compete effectively abroad by eliminating domestic disincentives to U.S. international business performance while actively proposing and supporting policies for export promotion.

3. To improve the ability of U.S. firms to compete domestically by providing effective domestic recourse to foreign unfair trade practices and injurious imports, while ensuring U.S. consumers access to fairly traded goods and services.

The enactment of constructive trade legislation this year can contribute significantly to correcting some of our trade related problems. But we must be realistic as to what it can and cannot do. Major macroeconomic issues such as the budget deficit, growth rate differentials, tax structures, exchange rate instability and third world debt present challenges not readily resolved through trade legislation. The cost of capital in the United States is considerably higher than for many of our trading partners. Congress must systematically address this issue if American business is to become truly competitive in the international marketplace. However, the Chamber of Commerce, on behalf of its members, is convinced that there is a need for responsible trade legislation that would have a positive impact on America's international trade competitiveness. New trade legislation as well as the aggressive implementation of existing trade law can provide important incentives for U.S. business to export, remove disincentives to export, and aggressively combat the unfair trade practices of our trade partners without becoming protectionist.

Our basic contention remains that increased competitiveness for U.S. business can best be accomplished through more open, liberalized trade around the world. But we remain convinced that this requires the opening of markets by all our trading partners and an equal commitment on their part to avoid resort to protectionist measures which keep foreign products out or serve to otherwise put competitive foreign products at an unfair disadvantage. This necessarily involves a demonstration of U.S. government will to show our trading partners that we mean business and we will take strong action when the legitimate export interests of U.S. companies are unfairly impeded by other countries.

At the same time, we must be prudent and cautious in our use of retaliation; we must avoid taking such steps which will, in the end, prove detrimental to our own national economic interest.

I would like to now comment generally on the three bills, in the context of my previous remarks.

The Senate omnibus bill appears to be predicated on the following assumptions: existing trade law is inadequate to counter foreign unfair trade practices; the Administration's response to such practices has been inadequate (therefore the need for tougher mandatory retaliation); and Congress should be more involved in the development and implementation of trade policy. These underlying assumptions have led to a range of provisions in S. 490 some of which we support and others to which the Chamber objects.

There are several aspects of the Senate bill which we believe are useful and important. For example, on Section 301, we support mandated retaliation if there is a trade agreement violation. We also agree with the intent of the Senate provision which shortens the time for resolution of a Section 301 case. The Chamber supports in principle the inclusion of "targeting" as an actionable 301 practice. We are also pleased with provisions to strengthen intellectual property rights protection contained in the Senate omnibus bill, and the inclusion of multilateral negotiations and antitrust relief as additional import relief options under Section 201.

At the same time, we believe that the Senate bill goes too far in reducing the President's discretion and mandating executive branch action in response to unfair practices, in the number of unfair practices which require retaliation, in limiting Presidential flexibility with respect to granting import relief under Section 201, and in new conditions imposed on the President in order to enter into trade negotiations and conclude trade agreements.

As introduced, the House bill (H.R. 3) was identical to H.R. 4800 which passed the House in the last session of Congress. While H.R. 3 reflects a similiar dissatisfaction with the effectiveness of current law to counter foreign unfair trade practices and the Administration's response to those practices, it does so less dramatically than the Senate bill. The House bill does less to circumscribe Presidential discretion and flexibility in the following areas: Section 301; granting of negotiating authority; and provision of relief under Section 201. There are a number of provisions in H.R. 3 as originally introduced, and as reported by the Ways and Means Committee, which the Chamber wholeheartedly endorses: mandatory retaliation when trade agreements are violated; strengthened intellectual property rights protection; strengthened telecommunications market access provisions; and clarification of the Foreign Corrupt Practices Act. We also endorse most, but not all, of the changes in the export control area.

However, H .R. 3 contains a number of provisions which the Chamber believes are not in the national economic interest. In proposed changes to Section 301, the House bill transfers authority to initiate Section 301 cases from the President to the USTR, which we believe does not contribute to the improved administration of the 301 statute. Perhaps the most objectionable provision in the House bill is that which requires retaliation against trading partners with "excessive and unwarranted" trade surpluses, the so-called Gephardt amendment. The Chamber is also opposed to the House proposal which would make the violation of internationally recognized workers' rights actionable under Section 301. We believe this condition would be arbitrary and highly unworkable.

It is, however, our understanding that the bill ordered reported by the Ways and Means Committee has sought to address several of our concerns. It reflects an awareness of the need to strike a balance between a more aggressive U.S. trade policy and retention of adequate flexibility to weigh the impact of an aggressive stance on other U.S. economic interests. While we have not yet seen the legislative language, we understand that it narrows the scope of the Gephardt amendment by focusing on unfair trade practices rather than mandating a quantitative reduction of the trade surplus. It also attempts to clarify the so-called Pease amendment with respect to workers' rights standards. While we are still unable to support such provisions, we note that they represent a step in the right direction.

In contrast to the House and Senate bills, the Administration's bill is essentially based on two principles -- current trade law is already adequate and needs little, if any revision; the second is that the President must retain maximum flexibility in the management of U.S. trade policy. It has, therefore, taken a minimalist approach in developing its legislative trade proposals.

The Chamber believes the Administration has not gone far enough in its Section 301 initiatives, because we do believe in mandatory retaliation when a trade agreement has been violated. We must be able to assure our trading partners of our sincerity and commitment to such agreements. The Administration's inclusion of a 24 month deadline in which the USTR must report to the President on what action to take in a Section 301 case is also insufficient to have useful impact on the administration of the statute; the Chamber believes more must be done to make Section 301 a more effective mechanism.

We do, however, support the Administration's measures to provide for formal consultations with Congress throughout multilateral negotiations. We look at this as a sincere effort on the part of the Executive Branch to respond to Congressional concerns that the President has not adequately involved the Hill in the trade policy process. Intellectual property rights protection, worker readjustment assistance and antitrust reform are other proposals we are pleased to see in the Administration's bill.

Mr. Chairman, let me now turn to a more detailed discussion of how specific provisions in each bill reflect our general observations.

Section 301 (of the Trade Act of 1974)

As you know, the General Accounting Office has undertaken a study, "Combating Unfair Foreign Trade Practices," which assesses Section 301 cases initiated since 1980. At the same time, the Chamber has conducted its own analysis on the use of Section 301 based upon research and discussion with various U.S trade agencies. We base our observations of the changes to Section 301 in the three major trade bills on our analysis of cases since 1975, and on an ongoing in-house survey of petitioners who have filed Section 301 cases.

The Senate bill (S. 490) seeks to increase the likelihood of investigations and retaliation under Section 301 through reduced Presidential discretion and an expanded list of actionable practices. It also imposes new conditions for the termination of retaliation. While the Chamber supports mandatory retaliation against trade agreement violations which we believe are "unjustifiable", we do not support Senate provisions which mandate retaliation against "unreasonable" and "discriminatory" practices as well. Although waiver provisions are provided for retaliation against "unreasonable" and "discriminatory" practices, they are quite burdensome and unnecessarily restrict Presidential discretion.

We do not support mandated self-initiation of investigation of practices deemed "significant," unless such practices are likely to violate a trade agreement. Similarly we do not endorse mandated negotiations with countries maintaining a "consistent pattern" of unfair practices (adversarial trade), unless that pattern of unfair practices is predominantly in violation of trade agreements.

The Senate bill imposes a 15 month deadline from the date an investigation was initiated or a nine month deadline from a favorable GATT ruling for retaliatory action, with few waivers for the President's inaction. The Chamber believes greater flexibility may be required than the Senate bill allows, although we support the concept of a more expeditious resolution of Section 301 cases. Our analysis of Section 301 cases since 1975 reinforces our concern that the average time required to conclude a case in the GATT has been 4.6 years, a length of time that is clearly unacceptable.

The House bill mandates Section 301 retaliation only if there is a violation of international trade agreements or if other "unjustifiable" practices are committed; the President has more discretion in deciding not to take retaliatory action. H.R. 3 also provides for mandatory quantitative surplus reduction targets in response to foreign trading partners' "excessive and unwarranted" trade surpluses (the so-called Gephardt ammendent). We oppose mandatory quantitative surplus reduction targets because such measures are arbitrary, do not address the fairness of trade practices, would probably raise prices and create shortages in related sectors, would ultimately reduce trade opportunities for U.S. companies, would likely violate GATT obligations, and are sure to provoke swift retaliation. In addition, H.R. 3 includes as an actionable 301 practice the denial of "internationally recognized workers' rights", which as noted earlier, the Chamber views as arbitrary and unworkable.

The Administration's proposals on Section 301 seek to retain maximum Presidential flexibility in the process. USTR would be required to make recommendations to the President 24 months from the date an investigation is initiated or 30 days from the conclusion of GATT dispute settlement, whichever is sooner. The Chamber believes this is little more than a cosmetic change since the revision would still allow the President to indefinitely defer action. The USTR could merely report to the President within 24 months that no action should be taken until the GATT dispute settlement process is complete. Therefore, the Chamber views this provision as clearly inadequate.

While the Chamber has been supportive of the Administration's recent actions under Section 301 to improve U.S. access to foreign markets, it is clear that such actions have been inadequate to address the wide array of foreign trade barriers to U.S. exports. The President should be required to take retaliatory action when there has been a trade agreement violation.

Based on our own analysis and from the responses we have received to our Section 301 survey of petitioners, it is clear that all three of the bills fail to address several critical aspects of Section 301. There are, for example, no criteria in any of the provisions for filing or acceptance of a petition. Current Section 301 law leaves the decision as to whether to institute an investigation up to the USTR's discretion -- there are no minimum requirements or formal procedures used to accept petitions or to institute investigations other than those criteria the USTR itself has established. This can lead to the acceptance or rejection of a case based on a judgement call made at the moment, rather than on the actual merits of the case and the usefulness of the Section 301 statute to address the alleged problem. Minimum informational requirements for submission of petitions and criteria for acceptance of petitions should be written into the statute. This would force both the Congress and the Administration to define the real purpose and appropriate usage of the 301 mechanism.

At the tail end of the process, there is really no mechanism to ascertain whether the unfair practice has been "successfully" concluded. There are no real follow-up procedures to ascertain whether the unfair practice has been permanently eliminated. The Administration has, in its bill, attempted to insert a mechanism which would require a semiannual report to Congress on the effects of recent 301 actions on U.S. commerce. This is a step in the right direction. There is also the need to provide for industry input as to whether or not a case has been "successfully" concluded. The statute should mandate an industry/petitioner response to the President's determination. If, after six months, the petitioner still believes the unfair practice has not been effectively eradicated, USTR should revisit the case. There is some skepticism in the business community regarding the effectiveness of Section 301 actions for two reasons: even if the country's practice is successfully eliminated other unfair practices are frequently inserted or substituted (a fact highlighted in the GAO study) or; individual companies may be reluctant to come forward to assist with an investigation for fear that the final outcome will be counter-retaliation, either direct or indirect, by the foreign country. These factors should be taken into consideration when proposing changes to Section 301.

We also note that S. 490 amends section 181 of the Trade Act of 1974 (requiring publication of the National Trade Estimates report) to require that the report estimate the additional value of U.S. exports and foreign investment that would have occured in the absence of the identified barriers and distortions. We support this provision as an important step toward assigning relative importance to the practices identified in the report. For the same reasons, we recommend supplementing this provision with additional requirements for systematic identification of those practices which violate bilateral or multilateral trade agreements.

Section 201 (of the Trade Act of 1974)

The Chamber continues to support use of fair trade statutes to provide temporary, degressive relief to seriously injured domestic industries. At the same time, because of the nature of relief that could be provided under this statute, the President must retain the flexibility to weigh the benefits of providing relief to an industry against the costs to consumers and other domestic industries.

S. 490 makes it more difficult for the petitioning industry to qualify for relief but at the same time limits the President's ability to deny relief once the ITC has found serious injury. S. 490 mandates that the President provide relief if there is a unanimous ITC finding, unless Congress approves his alternative. The Chamber believes this provision is too restrictive and opposes its inclusion. While H.R. 3 mandates that the President provide relief if the ITC finds injury he may decline to take action if it is not in the "national economic interest". This waiver is already in the current law and does not further limit the President's ability to take action.

The Senate bill mandates the establishment of an industry adjustment advisory plan development group and at the same time, requires the petitioner to submit either the group plan or one of its own choosing to the ITC after serious injury is found. The Chamber opposes the mandated formation of industry advisory groups. The Senate bill requires the ITC to include in its report to the President a description of the short term and long term effects its remedy would have on other domestic industries and consumers. The Chamber strongly supports such measures, yet their value would appear diminished if the President had little discretion to accept or reject a unanimous ITC finding. While there are instances in which Section 201 should be granted to a seriously injured industry, the Chamber believes the President must retain the discretion to decide when such action is appropriate and to weigh the costs of providing such relief against the benefits to be gained.

The Chamber also supports efforts to facilitate industry adjustment to import competition. We do not believe mandated formation of industry adjustment advisory groups should be a prerequisite for such a process. The Chamber also opposes the provision in S. 490 which calls for the imposition of additional import fees to fund a trade dislocated worker program. Instead, we support one consolidated program for all dislocated workers funded out of general revenues.

The House bill also requires the ITC to consider the impact of providing relief on consumers and others in the domestic marketplace which, as noted previously, we strongly support. H.R. 3 leaves as optional the submission of an adjustment plan and establishes a trust fund from revenues of tariffs imposed under Section 201 to finance a trade dislocated worker assistance program.

While the Chamber is still reviewing a few aspects of Section 201 proposals, I would like to comment on a facet of the process that perhaps has not been adequately addressed.

Currently, the ITC provides its remedy recommendation in somewhat of a vacuum. The petitioner, while often indicating the type of relief option it views as preferable, rarely indicates how certain types of relief would facilitate adjustment. Perhaps the petitioning industry should be required to demonstrate in its petition how various forms of import relief (tariffs, quotas, OMAs and other measures) would directly facilitate that industry's adjustment or restructuring in order to regain its competitive position. The ITC would incorporate this information into its development of a remedy recommendation. The Chamber believes that the relief ultimately provided should not be any greater or any less than the amount required to remedy the serious injury.

We also believe government coordination of an adjustment advisory group process is unjustified. Government should not be involved in developing a plan which it will later be asked to judge. It will not be able to exercise the necessary objectivity required in such a process.

Trade Agreement Negotiating and Implementation Authority

The Chamber strongly supports provision of renewed negotiating authority to enable the President to enter with full confidence into the Uruguay round of multilateral trade talks.

Each of the three major trade bills grants the President that authority, however, the Senate bill imposes restrictions and conditions the President must first meet. While we believe it is important for the Administration to keep the Congress informed through consultations, overly restrictive measures are counterproductive. Without full flexibility, the President/USTR's negotiating arsenal is severely limited. Therefore, we are strongly opposed to provisions in the Senate bill which impose such unnecessary constraints on the President's negotiating ability.

It is our understanding that the bill reported out of the House Ways and Means Committee has proposed a more constructive measure in this regard.

Antidumping and Countervailing Duty Statutes

The Chamber recognizes the severity of problems caused by persistent dumping and subsidy practices of foreign trading partners.

At the same time, current laws provide a GATT-consistent mechanism for countering such unfair practices. The clamor to amend current law stems from several frustrations: an apparent ability by certain trading partners to circumvent duties, once imposed (which may be as much a problem with adequate customs department enforcement capability as it is a flaw in the dumping laws); the fact that duties, once collected, do not directly compensate the injured industry and therefore, do less to improve the condition of the petitioning industry than had been imagined; the process to file a case can be quite costly by the time legal and other fees are paid.

This sort of concern has resulted in a provision in H.R. 3 to allow private right of action. While the Chamber has no formal position on this issue, we do recognize that AD and CVD duties are not intended to be punitive in either our domestic or multilateral codes. We do, however, have some concern that the current process carries a very high price for small businesses which do not have the extensive resources required to file a case. The Chamber, in principle, believes efforts should be made to make the process more accessible to small businesses.

Diversionary dumping is another practice which has increasingly been the cause of concern to U.S. industries and has received major attention in trade legislation. The Chamber has taken a long, hard look at legislative proposals to address diversionary dumping. We have found them to be administratively unworkable and, by and large, GATT-illegal. We do strongly believe that this is an issue which must be addressed in the current round of GATT talks so that we can work collectively with our trading partners to seek an end to such practices.

Other specific antidumping and countervailing duty provisions are currently under review.

Intellectual Property Rights Protection

The Chamber is supportive of proposed measures in the House, Senate and Administration bills to strengthen intellectual property rights protection, (although we have no position on two of the Administration's proposals pertaining to agriculture, chemical products and animal drugs or digital audio recording devices). With intellectual property piracy costing U.S. companies an estimated $8 billion to $20 billion a year, the Chamber is committed to modernizing applicable laws. Revisions to the Section 337 statute are necessary as are efforts to ensure process patent protection. We also support changes in the law which would require the ITC to act promptly on requests for relief, pending the final resolution of a complaint. In cases in which a key shipment of infringing goods is en route or a critical selling season is approaching, the failure of the ITC to act promptly inflicts harm on the intellectual property owners that is not easily remedied. We applaud Senate, House and Administration efforts to address these critical issues.

Section 232 of the Trade Expansion Act of 1962

While the Chamber fully appreciates the concern over enforcement of Section 232, we do oppose efforts in the Senate and House bills to shorten the deadlines for Commerce Department investigations and Presidential determinations regarding imports whih may threaten national security. Having been a part of that process, I am very familiar with investigation requirements and time constraints. I know from firsthand experience that the Commerce Department needs a full year in order to make an adequate factual determination.

In our view, legislative efforts to ammend Section 232 should limit revisions to requiring the President to act, one way or another, within a reasonable time from receipt of the 232 investigation report by the Secretary of Commerce.

Export Controls

Finally, Mr. Chairman, while we understand that it is not within the jurisdiction of your Committee, the Chamber would like to encourage the Senate to systematically address needed changes in U.S. export control laws and regulations. As you know, H.R. 3 contains a number of changes to the export control laws, many of which the Chamber endorses.

That concludes my statement, Mr. Chairman. I would be pleased to answer any questions you might have.

STATEMENT OF CALYMAN COHEN, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE, WASHINGTON, DC

Mr. COHEN. Thank you, Mr. Chairman, members of the committee. We appreciate this opportunity to appear in order to compare several pending trade bills. Before commenting on the specifics of the bill, I would like to say thank you for the members of ECAT for all the work the committee has done in crafting foreign trade legislation over these past years.

We recognize that there is a need today to bring current fair and unfair trade statutes abreast of current economic developments and also to provide the President with authorities to negotiate trade agreements. We believe a trade bill is necessary, and we look forward to working with you in the development of one that we and others can support.

At the outset, let me say that the general thrust of the three basic pending bills—H.R. 3, S. 490, and S. 636—in our view are all commendable. We believe that with a number of changes, the three major vehicles could be supported by ECAT and others in the business community.

As regards the specifics that you had asked us to focus on, let me begin with a brief overview of where we are on section 201. We strongly support the administration's proposal for a consolidated worker readjustment assistance program to be financed out of general revenues. We particularly feel that the emphasis on job retraining that a number of you have proposed in your own bill is the particularly important way to go. Job retraining in our view is essential.

We also support the provisions dealing with economic recession in H.R. 3 and S. 636 but would oppose the mandatory requirement for import restrictions under S. 490 when there are unanimous injury findings by the ITC. Recently, we proposed to the committee a variation on this particular proposal, where there is a unanimous finding of the commissioners on the ITC.

Our recommendation was that indeed there should be a requirement on Presidential action where there is unanimity among the commissioners, but the President should be able to select from a menu of options and should not be required, among those courses that he adopts, to follow some import relief measures.

With regard to section 301, we applaud the action of the administration in making more aggressive use of section 301; and we certainly expect to see it similarly used over the course of the future.

We are opposed to the Gephart Amendment in its original form, as well as as it has been revised by the Ways and Means Committee in H.R. 3. Although, let me say very clearly here we recognize the revisions in the Gephart amendment as they appear in H.R. 3 are a positive step forward. We would also say that we would be opposed overall to broaden mandatory retaliatory requirements under section 301, with a proviso. As in S. 490, if foreign barriers have been identified and those foreign barriers aren't alleviated, the ECAT membership a presumption that the President would be required to retaliate; and this again is specifically on unjustifiable barriers.

In the area of antidumping and countervailing duties, the membership is opposed to specific language on the private rights of action, which appears in H.R. 3. We also would be opposed to the diversionary dumping provisions in H.R. 3 and S. 490. Our feeling there is that the approaches taken would lead to retaliation against U.S. exports which would result in considerable cost to U.S. producers and U.S. consumers.

We also are opposed to the natural resource subsidiy amendment in H.R. 3 on the assumption that it would be illegal under the GATT. We strongly support the dropping of the injury test in S. 490—under Section 337 as provided for in S. 490. We strongly support the trade negotiating authorities in S. 636 and suggest that the negotiating authorities in the revised H.R. 3 might be an appropriate compromise for consideration, a compromise between those and S. 636 and S. 490.

In conclusion, let me point out that there are number of other measures pending before other committees that would significantly improve U.S. export capabilities. Here, I am referring to legislation that a number of you have been associated with on export administration and the Foreign Corrupt Practices Act. Those are measures that we strongly support.

And as a last note, let me, in response to Senator Hollings, mention that there is a very important provision that is often overlooked in S. 490. It is the requirement that trade impact statements be submitted when legislation on matters is being considered by the Congress. Therefore, when a tax bill might be submitted or a proposal dealing with very important social objectives is being considered, the trade impact would have to be noted. We think the more that we have a greater visibility of trade impact of almost all legislative proposals, the greater possibilities we have of not shooting ourselves in the foot and achieving many of the objectives that Senator Hollings, I believe, had in mind.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Cohen. Mr. Gundersheim?

[The prepared statement of Mr. McNeill follows:]

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE COMMITTEE ON FINANCE HEARINGS ON COMPARING MAJOR TRADE BILLS

Wednesday, April 8, 1987

Mr. Chairman, we in ECAT appreciate this opportunity to appear before the Finance Committee hearing to compare major pending trade bills, specifically H.R. 3, S.490, and Title II of S.636.

As would be expected, we have mixed views about various provisions of these bills. On balance, however, we believe that the general thrust of the bills is laudable and that with several changes they could be supported by ECAT and other representatives of the business community.

If we were asked to choose among the three bills, our first preference would be for the Administration's proposal in Title II of S.636. Our second preference would be for H.R. 3, as modified by the House Ways and Means Committee, and our final preference would be for S.490.

Having expressed our order of preference for the overall packages, it is only fair to note that each of the bills has its own preferable features. The remainder of my statement will address the principal features of the bills and will briefly provide the reasons for our preferences among them.

Before so commenting, I would like to express the deep appreciation of the members of ECAT for the work of the Finance Committee in crafting foreign trade legislation that will bring our fair and unfair trade statutes abreast of foreign trading realities and that will grant the President authorities to negotiate trade agreements. We believe that a trade bill is necessary and we look forward to one that can be supported by us and others.

In order of comment, I will touch on Section 201, Section 301, the antidumping and countervailing duty statutes, Section 337, and trade negotiating authorities. There are many other legislative proposals dealing with international trade that are of keen interest to ECAT but that are not commented on in this rather brief statement. Among such proposals are helpful amendments to the Foreign Corrupt Practices Act and the Export Administration Act that if enacted would considerably enhance our abilities to compete in foreign markets.

SECTION 201

Our basic feeling is that Section 201 in its present form strikes an appropriate balance whereby consideration of matters relating to import restrictions and the overall national interest can be weighed. We, nevertheless, understand the frustration of the Congress and others with certain of the criteria of Section 201 and with the manner in which it sometimes has been administered.

Import restrictions imposed pursuant to Section 201 almost always modify a U.S. import concession that other countries have paid for in the form of a reciprocal lowering of their own import barriers. Since something of value has been taken from them by Section 201 escape clause restrictions, the GATT rules authorize them to right the balance by imposing restrictions of their own against a similar volume of their imports from the United States -- or from any other country taking similar action -- or by being compensated by the United States through the lowering of U.S. import barriers on a like volume of their exports as that affected by the Section 201 restriction.

When considering amendments to Section 201, it is very important, therefore, to bear in mind that severe costs are involved in a general lowering of the threshold for import relief. Too easy a test would result in either substantial compensation bills owed by the United States to foreign countries whose trade would be disadvantaged by Section 201 relief, or in foreign retaliation against U.S. export industries if our trading partners decided against accepting compensation offered to them by the United States. In either case, domestic industries and workers not parties to the Section 201 process would have to pay the price for the import relief granted to others -- a not appealing prospect.

Of the three legislative proposals -- H.R.3, S.490, and S.636 -- S.636 essentially retains the structure of the present Section 201 with the addition of several key provisions aimed at enhancing the competitiveness of U.S. industries that are seriously injured by competitive imports.

We particularly like the Administration's proposal to combine the trade adjustment assistance program and the training provisions of the Job Partnership Training Act into a consolidated Worker Readjustment Assistance Program to be financed out of general revenues. ECAT is strongly supportive of this proposal because we believe its emphasis on job training will facilitate adjustment and lead to productive employment.

We also support the provisions of both S.636 and H.R.3 making it clear that during periods of economic recession it will not be necessary to demonstrate that imports are a more important cause of serious injury than recession itself. ECAT has long supported such an amendment of Section 201 both in the interests of equity and in the interests of maintaining public confidence in Section 201 as a viable mechanism for providing warranted relief from injurious imports. We would hope that S.490 could be amended to include this feature from the two other bills.

ECAT prefers the provisions of the revised H.R.3 to those of S.490 concerning the development of industry adjustment advisory plans. We believe that such plans can be valuable and that they should be encouraged as part of the Section 201 process, which is essentially what the revised H.R.3 provides for as does current law and S.636.

What troubles us more than the mandatory requirement for adjustment advisory plans in S.490 is the requirement for a tripartite plan development group representing firms, workers, and government officials. While we believe that any viable adjustment plan requires the joint agreement of management and labor, we believe it inadvisable that government officials be involved in the formulation process.

ECAT's principal objection to Section 201 amendments among the three bills is to the provision in S.490 requiring the imposition of Section 201 import restrictions in cases where there is a unanimous finding of serious injury by the members of the International Trade Commission, unless the President obtains congressional approval for an alternative remedy. We believe this too inflexible a provision since it is all too likely that such a requirement could work against the national interest.

We do, however, understand the occasional frustration with administration of Section 201 that has led members of the Finance Committee to draft this mandatory restriction on the President's flexibility. We have suggested a similar mechanism to the Congress in earlier statements and would like to repeat our recommendation here. It is that in instances where there is a unanimous finding of serious injury by members of the International Trade Commission that the President be required to take an affirmative action. We would hope that his initial action would be the provision of adjustment assistance to be followed by such measures as regulatory relief or relaxation of the antitrust laws -- if authorized -- and then import relief as a last resort. Even under our recommendation, we believe that the President must have ultimate discretion not to impose import restrictions perhaps along the lines already suggested in S.490.

There are a number of narrower amendments to Section 201 in each of the three bills that ECAT has not taken positions on.

SECTION 301

By way of introduction to our comments on Section 301, we would like to note our delight that Section 301 is being so effectively used as a means of improving overseas access for U.S. exports. We would also like to express our appreciation to this Committee for its insistence over the years that Section 301 and other unfair trade statutes be utilized in order to secure enforement of U.S. international rights.

Other than the restrictive grant of trade negotiating authority in S.490, ECAT's major objections to the House and Senate bills concern certain amendments to Section 301. Our principal concerns are with the so-called Gephardt amendment of H.R.3, and with the mandatory requirements of S.490. Because S.636 leaves Section 301 basically as it is, I shall not comment on that bill's Section 301 provisions other than to say that ECAT prefers them to those in both other bills.

Putting aside matters of procedure, it is ECAT's belief that Section 301 provides the President with a grant of authority sufficiently broad that he can define "unreasonable, unjustifiable and discriminatory" foreign barriers to cover almost any conceivable offense so that it is not necessary to specify practices such as targeting, denial of workers rights or denial of reciprocity as actionable causes under Section 301. In our judgment they already are actionable under any reasonable interpretation of the section. To single them out legislatively would appear to give such selected causes a priority over others in the minds of those who administer Section 301. It is a principal reason why we object to singling out such practices as targeting under Section 301.

H.R.3 as modified by the House Ways and Means Committee still contains the single most objectionable amendment to Section 301, the Gephardt amendment. Although considerably revised from its original version in H.R.3 by the Ways and Means Committee, it is still generally opposed by the business community.

In its revised form, the Gephardt amendment in H.R.3 retains the set of arithmetic criteria to identify countries which have excessive trade surpluses with the United States. Currently, these countries are Japan, West Germany, Italy, Brazil, South Korea, and Taiwan. If these countries maintain a pattern of Section 301 objectionable trade practices, then negotiations are in order to resolve or alleviate the objectionable practices. If negotiations are unsuccessful, the President must invoke Section 301 procedures, including the imposition of import restrictions that will cover the same volume of trade as that denied the United States by the objectionable practices. Such restrictions would be mandatory except that the President has waiver authorities for reasons of the national economic interest in the case of unjustifiable foreign barriers and in the case of unreasonable and discriminatory barriers he can waive retaliation if it would cause greater economic harm than the harm caused by the foreign practice.

While a significant improvement over the original Gephardt amendment, the Ways and Means version of the Gephardt amendment is still objectionable to most of the business community since it forces U.S. trade actions for reasons of arithmetic criteria. It is an instrument that can be used against the United States in its trade with countries with whom we may or will run "excessive" trade surpluses. Such surpluses increasingly will occur as we move toward positive overall foreign trade balances.

Other than the objection to the proposed arithmetic criteria being a major determinant of U.S. trade policy, it is ECAT's judgment that the Gephardt amendment in either of its two forms is clearly illegal and would, if enacted, subject U.S. exports to foreign retaliatory action. It would also probably torpedo for a long time trade liberalizing trade negotiations, which would be a calamity for the United States.

ECAT also finds objectionable the process established by S.490 that would require mandatory initiation of Section 301 action based on responses to significant foreign barriers identified in the National Trade Estimate Report. The mandatory retaliation that would appear to be required if negotiations fail is troublesome for similar reasons noted above in connection with the Gephardt amendment. Indeed, in some ways the Section 301 procedure in S.490 is more troublesome than the Gephardt amendment in that it applies to all countries whereas the Gephardt amendment is limited to a certain number of countries.

While we do object to general mandatory retaliation requirements, we do understand the reason why they are included in legislative proposals. An unenforced or underenforced statute has little utility, and can create anger and frustration to the extent that desired objectives are not achieved. I would observe, however, that expression of concern and frustration in the proposed trade legislation before the Congress does help achieve the active implementation of trade statutes as does congressional oversight of authorities delegated to the President.

There is a circumstance in which ECAT agrees that mandatory retaliation would be in order and that is in instances where the foreign practices involved in a Section 301 case unjustifiable, i.e., illegal as measured by international law or practice. In such cases, we would urge that the dispute settlement procedures of the GATT or other relevant procedures be utilized prior to retaliation so there will be no doubt as to the legality of the U.S. action. Even in respect of illegal foreign barriers, however, it would be wise for the President to have some form of limited discretion not to retaliate if vital national interests could be compromised.

THE ANTIDUMPING AND COUNTERVAILING DUTY STATUTES

ECAT's problems with proposed amendments to the antidumping and countervailing duty statutes are primarily with H.R.3. S.636 would make but minor changes to both statutes, and S.490's changes are primarily technical in nature with one major exception dealing with "diversionary" dumping. Similar provisions on diversionary dumping are found in H.R.3.

While ECAT does not have positions on many of the rather technical amendments to the dumping and countervailing duty statutes, it does have positions in opposition to major substantive changes dealing with private rights of action under the dumping law, with diversionary dumping and with natural resource subsidies under the countervailing duty statute.

Private Rights of Action

The so-called Guarini amendment to the antidumping provisions of H.R.3 would establish a private right of action enforceable in the courts for economic losses caused by foreign dumping in the U.S. market. Such rights are not provided for in the GATT and if enacted would be in violation of U.S. international obligations. There is a real danger that mirror legislation abroad might follow. Because more antidumping actions are brought against U.S. exports than those of any other country, U.S. exporters would likely wind up as substantial losers in foreign markets should foreign retaliation follow the proposed U.S. action.

ECAT opposes the Guarini amendment while recognizing and appreciating its intent to provide a means of discouraging the practice of dumping. Even though the Ways and Means Committee modified the amendment to limit the private right of action to multiple offenders -- defined to be three antidumping violations in a period of 10 years -- it still would be illegal according to Professor John Jackson and other acknowledged legal experts on the GATT.

Diversionary Dumping

We are opposed to the provisions in H.R. 3 and in S.490 making components incorporated in products subject to U.S. antidumping duties. Basically, the provision penalizes an exporter of a fabricated product if a component of that product earlier was found to have been dumped in the United States.

In enacted, the provision would violate the GATT and U.S. obligations under the Antidumping Code, thereby allowing foreign retaliation against U.S exports. The GATT defines dumping as the difference between the home price and the export price for "like products." The GATT does not authorize dumping duties on a product simply because it may contain a dumped component.

Natural Resource Subsidies

S.490 has no natural resource subsidy provision but H.R.3 does. As modified by the Ways and Means Committee, H.R.3 essentially would provide that if a natural resource subsidy even though "generally available" -- and therefore not countervailable under international law and practice -- is intended to confer an export benefit then it would be subject to the U.S. countervailing duty statute. Many in the legal community consider this modified version of questionable legality internationally. ECAT's position on the modified version will in large part depend on an answer to the question of legality.

SECTION 337

All three bills have similar provisions, and ECAT supports the proposals in each of them that would eliminate the requirement to prove injury in intellectual property rights cases. ECAT does not have positions on the more technical amendments to Section 337.

TRADE NEGOTIATING AUTHORITIES

ECAT prefers the grant of trade negotiating authoirities in S.636 to those in H.R.3 and S.490. Because we believe that negotiations on such matters as intellectual property rights, foreign investments and services will be long ones, we feel that the President needs a long-term grant of authority in order for him to be a credible and effective negotiator. Accordingly, ECAT has recommended that Congress extend the "fast track" procedure for a period of no less than ten years. Since negotiations for tariff reductions should not be as time-consuming as for non-tariff matters, ECAT has recommended at least a five-year tariff negotiating authority accompanied by a proclamation authority for the President to implement U.S. tariff cuts.

ECAT cares deeply about the grant of trade negotiating authority. American business is facing an increasingly complex set of barriers to trade and investment around the world. Acceptable solutions are primarily within the power and authority of governments. It is, therefore, crucial that governments negotiate to improve existing international rules and to develop new ones that will protect and foster international commerce.

An appropriate balance must be struck between the Administration's request for permanent non-tariff agreement authority and the very limited and conditional grant in S.490 if the President is to be able to be a credible negotiator. H.R.3 as amended by the Ways and Means Committee would appear to offer a middle ground with its six-year tariff proclamation authority and extension of the "fast track" authority for four years with an automatic extension for an additional two years if the Committee on Ways and Means and Finance agree with the USTR that such an extension is needed.

Again, thank you for the opportunity to appear at this hearing of the Finance Committee.

STATEMENT OF ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT, AMALGAMATED CLOTHING & TEXTILE WORKERS UNION, AFL-CIO, ON BEHALF OF THE AMERICAN FIBER, TEXTILE, APPAREL COALITION, THE AMERICAN IRON & STEEL INSTITUTE, THE LEATHER PRODUCTS COALITION, THE RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION, THE SPECIALTY STEEL INDUSTRY ASSOCIATION OF THE UNITED STATES, AND THE GROUP OF 33, NEW YORK, NY, ACCOMPANIED BY STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC.

Mr. GUNDERSHEIM. Thank you, Mr. Chairman, for allowing us the opportunity for me to speak on behalf of a number of organizations this morning. I am Art Gundersheim. I am the Assistant to the President of the Clothing and Textile Workers Union. Jack Sheinkman, who was scheduled to testify this morning, unfortunately is unable to be here and expresses his regret at being forced not to be able to present the testimony to the committee in person.

I am also joined this morning by Mr. Stanley Nehmer, who is the President of Economic Consulting Services, Inc., and a trade consultant to many of the organizations that I speak for this morning. Also here is Fawn Evenson from the Footwear Manufacturers Association and Barry Solarz, who is here on behalf of the American Iron & Steel Institute. We have Mitchell Cooper also on behalf of the Rubber & Plastic Footwear Manufacturers Association.

I would also ask that my full statement be made a part of the record.

The CHAIRMAN. Without objection, that will be done.

Mr. GUNDERSHEIM. And I will summarize in adherence to the time limits of the committee. I am here today representing some 50 organizations, which are listed in my prepared statement, employing some three million workers, all of whom share a common concern about unqualified tariff cutting authority in the hands of the President in the Uruguay trade round. And I would like to basically confine my testimony to the question of tariff-cutting authority.

All of the industries that are represented—textiles, steel, footwear, leather products, and so on—are import sensitive, and tariffs play an important role in their efforts to compete against lower priced foreign imports, imports which are often exported under unfair trade conditions and often produced by workers being paid a fraction of their U.S. counterparts, or working under conditions that would be illegal in the United States.

Tariffs have had only a limited effect in restraining imports, but that limited effect is crucial for many of the industries that we are speaking for. The simple fact is that the United States is the most open major market in the world and absorbs a disproportionate share of developing country imports, particularly in the products represented by the industries here today. Reducing or eliminating tariffs on these products will only exacerbate a bad import situation, which has already grown out of control in my industry and most of the industries—or all of the industries—that are represented here.

With the trade deficit at $170 billion last year, American manufacturing industries are considerably worse off in 1987 than they were prior to the Tokyo round. In aggregate terms, the loss is some 1 million jobs in manufacturing since 1980, and the increasing trade deficit attests to the seriously deteriorating position of U.S. manufacturing industries in the overall U.S. economy.

Nowhere is this more evident than in the industry I am most familiar with, which is textiles and apparel. Just last year for example, imports of textiles and apparel increased over 17 percent, despite the quota agreements we have in effect and an attempt by the administration to tighten their administration. This increase represented nearly 200,000 lost job opportunities for American workers.

Because of the import increases since 1980—the import penetration in just those 6 short years—has increased from 28 to over 50 percent and some 350,000 workers are no longer employed in the industry from what it was at that time.

A major goal of the Uruguay round will be the opening up of developing country markets to U.S. services and U.S. investment. The developing countries will be exacting a price for opening up their markets, and that price will be improved access to our markets. In other words, tariff reductions and particularly for their exports of textiles, footwear, carbon and specialty steel, copper and brass fabricated products, bicycles, lead, zinc, and a whole list of other products.

Thus, the firms and workers in these industries are being asked to bear the full burden of U.S.-negotiating objectives without any safety net really being provided for them. Frankly, we do not want to be the sacrificial first born for U.S.-negotiating objectives in other areas.

These industries have already paid the price many times over for the liberalized trade with the developing countries as a result of prior negotiating rounds. Our position is that, if an article is too import-sensitive to be on the GSP list, either by specific exclusion, in statute, or by administrative procedure, then it should not be eligible for tariff cuts in the new round.

There should also be limits on the President's authority to cut tariffs on articles which are eligible for GSP but nevertheless import-sensitive. In this regard, all the proposals currently before the committee, we feel are inadequate or, worse yet, callously indifferent to import-sensitive industries. The House bill, as reported from the Ways and Means Committee, provides no Congressional oversight over tariff agreements. The Administration's proposal sets no limits on tariff cuts nor staging requirements for import-sensitive items.

The House bill does limit the tariff cuts to 60 percent on import-sensitive items but permits cuts up to 100 percent on other items not considered to be import-sensitive.

In fact, these tariff cuts will act to vitiate the GSP program, which is intended to give developing countries a particular competitive advantage, vis-a-vis other countries. Only Senator Bentsen's bill limits the tariff cuts and provides Congressional oversight in the sense of tariff agreements having to come back on a fast track basis. And as well intentioned as this proposal is, we feel that it does not go far enough because our experience under fast track procedures is that Congress cannot really effectively change any part of the agreement.

We hope the committee would adopt the position that GSP ineligible products be excluded from tariff cuts in a new trade round, and we stand ready of course to answer the committee's questions. Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Sheinkman follows:]

STATEMENT OF

Jack Sheinkman
Secretary-Treasurer
Amalgamated Clothing and Textile Workers Union, AFL-CIO

On Behalf of

American Fiber, Textile, Apparel Coalition (AFTAC)*
American Iron and Steel Institute
Group of 33*
Leather Products Coalition*
Rubber & Plastic Footwear Manufacturers Association
Specialty Steel Industry of the United States

To Limit the President's Authority to Cut Tariffs if a New Trade Round is Authorized

to the

Finance Committee
United States Senate
Washington, D.C.

April 8, 1987

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* Membership list included within body of statement.

This statement in opposition to granting the President unqualified tariff cutting authority on import sensitive articles is made on behalf of the following organizations:

- AMERICAN FIBER, TEXTILE, APPAREL COALITION (AFTAC)
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - American Apparel Manufacturers Association
  - American Textile Manufacturers Institute
  - American Yarn Spinners Association
  - Carpet and Rug Institute
  - Clothing Manufacturers Association of U.S.A.
  - Industrial Fabrics Association International
  - International Ladies' Garment Workers' Union, AFL-CIO
  - Knitted Textile Association
  - Luggage and Leather Goods Manufacturers of America
  - Man-Made Fiber Producers Association
  - National Association of Uniform Manufacturers
  - National Cotton Council
  - National Knitwear & Sportswear Association
  - National Knitwear Manufacturers Association
  - National Wool Growers Association
  - Neckwear Association of America
  - Northern Textile Association
  - Textile Distributors Association
  - Work Glove Manufacturers Association

- AMERICAN IRON AND STEEL INSTITUTE

- GROUP OF 33
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - American Apparel Manufacturers Association
  - American Brush Manufacturers Association
  - American Federation of Fishermen
  - American Mushroom Institute
  - American Pipe Fittings Association
  - American Textile Machinery Association
  - American Textile Manufacturers Institute
  - American Yarn Spinners Association
  - Association of Synthetic Yarn Manufacturers
  - Bicycle Manufacturers Association of America Inc.
  - Cast Iron Soil Pipe Institute
  - Clothing Manufacturers Association
  - Copper and Brass Fabricators Council, Inc.
  - Footwear Industries of America, Inc.
  - Industrial Union Department, AFL-CIO
  - International Ladies' Garment Workers' Union, AFL-CIO
  - International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO
  - Lead-Zinc Producers Committee
  - Luggage & Leather Goods Manufacturers of America, Inc.
  - Man-Made Fiber Producers Association

- GROUP OF 33 (continued)
  - National Association of Chain Manufacturers
  - National Association of Hosiery Manufacturers
  - National Cotton Council
  - National Knitwear and Sportswear Association
  - National Knitwear Manufacturers Association
  - Northern Textile Association
  - Outdoor Power Equipment Institute
  - Scale Manufacturers Association, Inc.
  - Synthetic Organic Chemical Manufacturers Association
  - Textile Distributors Association
  - Valve Manufacturers Association
  - Work Glove Manufacturers Association
- LEATHER PRODUCTS COALITION
  - Amalgamated Clothing & Textile Workers Union, AFL-CIO
  - Footwear Industries of America, Inc.
  - International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO
  - Luggage & Leather Goods Manufacturers of America, Inc.
  - Work Glove Manufacturers Association
- RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION
- SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

The industries represented by these organizations are located throughout the United States and employ about 3 million people.

These organizations oppose granting the President authority to cut tariffs on import-sensitive articles as part of a new round of trade negotiations.

We take this position because of two fundamental reasons. First, American manufacturing industries, including all of the industries represented by these organizations, are considerably worse off today than they were prior to the Tokyo Round, the last round of trade negotiations, which concluded in 1979. In aggregate terms, the loss of some 1 million jobs in manufacturing since 1980 and the increasing trade deficit, which increased from $36 billion in 1980 to $170 billion in 1986 clearly attest to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Second, many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. We are carrying a disproportionate share of the developed world's obligations towards these countries' economic development and their debt reduction. These are the same developing countries that will be the focus of the new trade round, which has as a major goal the opening up of developing country markets to U.S. services and U.S. investment. Our industries understand all too well what that means. The developing countries will be exacting a price for opening up their markets and that price will be improved access to our markets for their exports of textiles, apparel, footwear, carbon and specialty steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, work gloves, chemicals, etc. This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on an unfairly-traded basis. Must we concede still more of our market to these countries in order that U.S. market-opening objectives for U.S. services and investment opportunities are met?

The industries represented here today -- and we suspect many others as well -- do not want to be used as pawns for U.S. negotiating objectives in other areas. Our firms and workers should not bear the price to open up developing country markets to the products or services of other U.S. sectors. It is bad enough that our industries have been repeatedly traded off for U.S. foreign policy objectives in these countries. As an example, last year Turkey openly blackmailed the U.S. to secure wider access to the U.S. textile market in return for renewal of U.S.-leased military bases there. Continued access to the U.S. market should be sufficient reason for these countries to open their doors to our goods and services.

This access is easily measured. In 1986, a substantial portion of the U.S. trade deficit was with developing countries. We had a $14.3 billion deficit with Taiwan, $5.9 billion with Hong Kong, $4.9 billion with Mexico, $2.9 billion with Brazil, $9.3 billion with Korea, and so on. Trade in the products whose industries are represented here today accounts for a substantial portion of these deficits. These are enormously large trade imbalances and we believe our trade negotiators should not ignore their existence.

Since enactment of the Reciprocal Trade Agreements Act of 1934, Congress periodically has placed limitations on the President's authority to negotiate reductions in tariffs under reciprocal trade agreements. Each trade round has been preceded by pronouncements that point to the growth in world trade stemming directly from the liberalizing effects of successive world trade rounds and in turn how this growth benefits U.S. commerce. There certainly has been an increase in the number of goods traded in the world since the last trade round; it seems, at least to these industries, that most of the increase in trade is destined for our shores. With an overall trade deficit of $170 billion in 1986, there are probably very few American manufacturing industries that are better off today than they were before the last trade round -- a trade round that resulted in many U.S. products receiving the maximum allowable 60 percent tariff cut, and an average of 32 percent tariff reduction on industrial products.

Great optimism had been expressed that the U.S. trade deficit would be reduced as a result of the decline in the strength of the U.S. dollar. While some imports have become less competitive because of exchange rate realignment, this is simply not the case for many of the products of concern to the organizations represented here today. Imports of many of these products have continued to increase despite the falling dollar. In particular, imports from the Newly Industrializing Countries (NICs), which supply the United States with such large volumes of imports, have continued to grow; since the currencies of so many NICs are tied to the U.S. dollar, there has not been a corresponding decline in the dollar against these currencies. Indeed, U.S. imports of many of the products in question have continued to rise.

Similar optimism has been expressed in forecasting job growth in the coming months and years. To the extent these expectations are realized, however, little benefit will accrue to the workers in the industries represented here today. Labor in many of these industries is not very mobile, for both economic and social reasons. It is unlikely that an unemployed garment worker in New York City will relocate to Seattle to assemble jet aircraft; there is simply a gross mismatch of needed skills. It is also important to ask just what kind of jobs will be created in the near future. The upcoming trade negotiations, as the Administration seeks to conduct them, will deliberately destroy jobs in manufacturing to benefit jobs in service industries which jobs are often lower paid than manufacturing jobs.

Considering the plight of U.S. manufacturing, we do not agree that the President should have authority to cut tariffs on import-sensitive items. There already exists a Government standard for determining what is import-sensitive. The standard is whether or not a product is eligible for duty-free treatment under the Generalized System of Preferences (GSP) Program. If the Government had already made a determination that a product is too import-sensitive to be on the GSP Preference List, either by a specific exclusion in the statute or by administrative procedure, then such product should not be subject to tariff cuts in a new trade round. It makes no economic sense to say a product is import sensitive and cannot be included in the GSP, and then cut the tariff on the same product perhaps to zero as provided under GSP. Even with this limitation, U.S. negotiators would still have a substantial number of products on which to negotiate and the President would have the authority he says he needs to enter into a new trade round.

We do not mean to suggest that just because a product is not eligible for GSP that it is not import sensitive. There are probably many products that are currently eligible for GSP that are also import sensitive and thus should not have their tariffs cut. At the very least, there should be a limit on tariff cuts on such products, a level well below that permitted in the Tokyo Round. In this regard we support the proposal of the synthetic organic chemical industry to limit tariff reductions for import-sensitive products that are eligible for GSP treatment.

We are deeply concerned over the tariff cutting authority provisions contained in the revised House trade bill, H.R. 3, and the Administration's bill, S. 539. The Administration's bill gives the President carte blanche to negotiate and proclaim duty reductions. There are no requirements for staging or for Congressional review. The House bill is not much better. It does not provide for Congressional review and allows tariff cuts of up to 100 percent on all items, unless such articles are determined import-sensitive by the ITC and USTR, and for those items, maximum tariff cuts can be up to 60 percent. So under the House bill, what was formerly the maximum tariff cut allowed under the Tokyo round -- 60 percent --becomes the standard for import-sensitive articles. Furthermore, any large tariff cuts will act to vitiate the effectiveness of the GSP program, the aim of which is to give developing countries a competitive advantage over other countries.

We think both proposals callously disregard the deteriorating position of many basic industries that depend on tariffs to provide some insulation against imports -- imports that are often unfairly traded and are the product of workers who are paid a fraction of U.S. wages, and who often work under substandard conditions that would be illegal in the United States.

The Senate bill, S. 490, is an improvement over the House and Administration's approaches. At least there is an attempt to provide some oversight to the negotiating process. The Administration would be required to state up front what its objectives would be with respect to import-sensitive industries and get Congressional approval to proceed; all tariff agreements as well as non-tariff agreements would have to come back to Congress for approval under fast-track procedures. The limitation on tariff cuts for articles with duties above 5 percent would be 50 percent, the same as in the Kennedy round.

While this is an improvement over the other proposals, it will not in our estimation provide an adequate safeguard for import-sensitive industries as undoubtedly intended by the provision's framers. We have learned through experience that once an agreement is negotiated, Congress has left itself virtually powerless to change implementing legislation under "fast-track" procedures.

The procedure by which these cuts will be brought back to Congress affords little opportunity to redress problem areas. Such cuts will probably be brought back with numerous other trade agreements, all bundled together, and the vote under the fast track procedures of Section 151 is either up or down, with no amendments allowed. This is not a procedure that inspires confidence on our part.

The Israeli-U.S. Free Trade Area agreement provides a good example of how this procedure actually works. Under a provision in the Israeli agreement, staging requirements on the tariff cuts were brought back to Congress for review. Despite assurances to the Congress by Ambassador Brock that tariff cuts on certain import-sensitive textile and leather products would be phased in more gradually than for other products, the Administration ignored its commitment and phased out tariffs on most import-sensitive textile and leather products immediately. When we protested the staging of the cuts, we were told that to change any of the staging requirements would upset the agreement and it just could not be done.

Thus, provisions in S. 490 for Congressional review and approval under the fast-track, while better than the House and Administration's proposals, are not a safeguard for import-sensitive industries if experience is to be our guide.

Conclusion

In summary, the industries represented here today would clearly be hurt by further duty cuts, which would make the U.S. market, with relatively few non-tariff barriers, an even more attractive market. More important, however, these tariffs, no matter how small, provide some degree of insulation against imports. To reduce these tariffs would be catastrophic to certain domestic producers and workers; duties make a substantial difference to these industries.

We think the proposal to give the President authority to cut tariffs on these products is coming at the worst possible time insofar as these particular industries are concerned. If it is granted, more plants will close, or go off-shore to compete resulting in fewer U.S. manufacturing jobs and less productive capacity in this country. Thus, we urge the Committee to give favorable consideration to the proposal we have put forward today.

The CHAIRMAN. The sequence for the arrival of the Senators is Danforth, Baucus, Packwood, Heinz, and Rockefeller. Mr. Gundersheim, I think that we have addressed that problem by requiring the consultation—the problem you discussed in the last of your statement—by requiring that the Administration consult as they negotiate.

We think that is important, that we know what is being agreed to by the Administration, advising us as they negotiate. The Congress would be on record as not wanting to accept things that would be damaging to U.S. industry and we would make that known. Don't you think that is a positive thing?

Mr. GUNDERSHEIM. Oh, I would certainly agree that consultation is far better than no consultation, and I think clearly the process could not work if there were no consultations, not only with Congress quite frankly, but the entire private sector, which is most directly involved.

The CHAIRMAN. Yet time and time again, we have seen things happen under this and previous Administrations where there just wasn't any consultation. After the fact, we were advised.

Mr. GUNDERSHEIM. I would make one other point, which is made in my testimony. Consultation doesn't necessarily require listening to the advice, particularly in following it. Also, commitments made are not always adhered to, as has happened in the past. And third, quite frankly the negotiating objectives of the Administration are far different from ours; and I don't think the consultation aspects will fundamentally answer our objectives.

Mr. NEHMER. Senator, if I may just add?

The CHAIRMAN. Look, I have such a limited time. We have many witnesses here. Mr. Archey, on one of your comments concerning section 301, you state—as I understand it—that you think retaliation should only be mandatory in cases where trade agreements are violated. That is my understanding of what we do in the legislation.

We require that the President retaliate, and then we cite afterward the exceptions to the requirement; but what we are aiming at is cases of actual trade violations. I don't understand the difference.

Mr. ARCHEY. First of all, Senator, I think——

The CHAIRMAN. If it takes more to get this issue clarified, let me say that is where I think we are headed. That is our objective with the legislation.

Mr. ARCHEY. I think it clearly tips to an emphasis on unjustifiable practices, one of which would be violations of trade agreements; but what I am saying, Senator, is that the Senate bill mandates retaliation against all practices.

The CHAIRMAN. And it gives you the exemptions.

Mr. ARCHEY. Then, it gives you the exemptions.

The CHAIRMAN. Yes.

Mr. ARCHEY. I think, first of all, there is a difference between that and the House bill as reported out because the House bill provides to the President existing law discretion on unreasonable and discriminatory practices. He does not have to show cause of why he did not take retaliation, et cetera. That is a very big difference between the Senate and the House 301 provisions.

The second thing is that it is our view, Senator, that although you do allow for waiver provisions for unreasonable and discriminatory practices, those are still fairly difficult provisions; and the President, in our view, is pretty much put in a box if he does not take retaliation on an unreasonable and discriminatory practice.

And the last point I make is that I agree with the central thrust because, when you then combine not just the mandatory retaliation but the changes that you are making in the National Trade Estimates Report—which puts a very heavy emphasis on STR on going after them, that is, mandatory self initiation of investigations on unjustifiable practices—it is clear, I agree, tipped to those types of practices.

But I am saying that the bill clearly, and in my view unequivocally, says that all unfair practices require mandatory retaliation unless the out provisions are used, and I think, as you are suggesting, the out provisions for an unjustifiable practice are very narrowly defined, but those for unreasonable discriminatory are slightly more liberal; but I wouldn't consider them to be exactly easy. That is the point we are making.

And in comparison with the House bill, they are substantially more stringent.

The CHAIRMAN. We will take a look at that. Mr. Nehmer, I have some more time apparently. Go ahead.

Mr. NEHMER. I was just going to say, as an example of the old saying in this town: Watch what we do and not what we say. In the United States-Israel Free Trade Area Negotiations, there was a lot of concern on the part of members of the Senate for some of these import-sensitive products. And there was a letter written by Ambassador Brock, at that time the U.S. Trade Representative, concerning the staging; and unfortunately, the administration went ahead and phased out tariffs at a much more rapid rate than one would have expected from Ambassador Brock's commitment letter.

When this was brought to the attention of the administration—we protested and members of the Senate protested—we were told that to change the staging requirements, once the agreement has been agreed to—with the Israelis in that case—and put forward to the Senate would have meant upsetting the free trade area agreement; and that just could not be done. So, we worry about commitments, Senator. We worry about commitments that are made and not lived up to.

The CHAIRMAN. Thank you, I see my time has expired. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman. Gentlemen, you heard Senator Hollings' statement earlier this morning. In his prepared statement, he lists items where a certain percentage of foreign companies' products are sold within our borders. Let me go down some of the items on that list.

He said within our borders, foreign companies now sell 42 percent of semiconductors, 81 percent of footwear, 46 percent of machine tools, 63 percent of motorcycles, 90 percent of 35 millimeter cameras; the list just goes on and on and on. Fifty percent of musical instruments, 67 percent of microwaves, 85 percent of watches; and the list does go on and on.

The question I have for each of you is: Where are we going to be in the year 2000? Are any of those items on that list going to change, do you think? And the question is: What is it going to take to change market shares where more of those items are produced in the United States? Some of you are more protectionist; some of you are more free trade.

We know that in Washington, in a democratic society, that, yes, there is going to be a trade bill; and it is going to be somewhere in between, somewhere between the extreme degrees of protectionism and free trade. Once that bill is passed, the question I have for each of you is: To what degree will that trade bill help us reduce foreign market shares of those items on that list? And what else are we going to have to do to change the figures on that list? We will start with Mr. Archey.

Mr. ARCHEY. First of all, Senator, I am not an economist, and therefore, I consider myself an honorable man. [Laughter.]

And I am under no illusions about one's impressions in terms of these predictions because who would have predicted between 1981 and 1985 what the trade deficit would have done, in terms of turnaround? I think that insofar as that market penetration of several of those sectors is a function of unfair practices, whether it is unfair subsidies, dumping, certainly under your new definition of targeting, and several other things, I think that there would be some remediation of that and some assistance.

If you are asking me if those industries are going to end up becoming rejuvenated as a result of the trade bill, if the practices that are being conducted by the marketers of those products are fair, then I am not convinced that the trade bill or any of the trade bills is going to per se address, I think—and that gets to the other question, which is whether or not you want to use section 201 in such a way as to protect industries like footwear and others. And the question that has to be addressed and it has to be addressed specifically is: At what cost to the consumer? At what costs to other sectoral interests? At what cost to the overall economic interest because of compensation requirements, other possible retaliation, et cetera?

I am saying your question is a good one, and it is also a very complicated one; and I think I would rather address it on a case-by-case basis.

Senator BAUCUS. Mr. Cohen.

Mr. COHEN. Senator Baucus, I can only say that the answer is multifaceted. I do not believe that an adjustment of our current trade law, both those provisions dealing with fair and unfair trade practices, has in and of itself the solution to our trade deficit. They can, if modified, make a significant change in our ability to enter foreign markets, but only to a limited extent. The major factor, we believe very strongly, in terms of our current trade problems is tied into macroeconomic forces and most importantly the value of the dollar. We have seen a significant decline in the value of the dollar.

Senator BAUCUS. It is not going to go any further. The J curve is not working very well. How is that going to make a difference?

Mr. COHEN. Over the short term we are seeing now, the cost of imported goods, which remain fairly high, has resulted in very high levels for the value of imports—the J curve that you referred to. The expectation remains, however, that there will be a significant improvement in our ability to export over the coming decade, if we are talking about moving toward the year 2000.

Senator BAUCUS. I have 60 seconds to split between the remaining two. Mr. Gundersheim?

Mr. GUNDERSHEIM. I would just make one comment in a certain sense. There are standards that are applied to free trade that are applied to no other area of our life, and frankly, those of us who speak for a managed trade system don't understand because there are other competing social goals that seem to be forgotten. I mean, it is not for no reason that we have restraints on monopoly and other laws that clearly restrain trade in this country and restrain competition. We have laws against consumer fraud; we have fair labor standard practices, that we have environmental and social goals, that we put some restraints on free trade but for very good and totally defendable reasons.

And somehow, when you talk about international trade, these same standards are never applied.

Second, when it comes to unfair practices, we punish crime. I don't understand it. If I commit a murder, there is a definitive penalty there. If you commit murder in international trade, people sit here and say don't do anything. I don't understand that, frankly.

The CHAIRMAN. Thank you very much.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Gundersheim, you used the expression "managed trade system." Do you support that?

Mr. GUNDERSHEIM. I sure do.

Senator PACKWOOD. Do you think that Japan has a managed trade system?

Mr. GUNDERSHEIM. I certainly do.

Senator PACKWOOD. Starting in 1978, Japan made a conscious decision to dramatically reduce their productive capacity and their employment in the aluminum industry. They have made the same decision in the apparel industry—not textiles, but apparel. They have just decided they cannot compete with Singapore and Malaysia and they are phasing down.

Would you recommend that same kind of a Government policy toward industries in the United States where, as a conscious decision, we decided certain of them simply cannot compete?

Mr. GUNDERSHEIM. I would certainly agree that, where they have a situation of demonstrated overcapacity, if we had a comprehensive program to find alternative livelihoods including income support during the transition period, more than just retraining, but dealing with all the other social problems—much as the Japanese do—if you have a constantly expanding economy whereby the movement and transition of people can be reasonably accomplished, I don't think there is any trade union that has really objected to that.

Senator PACKWOOD. I don't want to give you the impression that Japan initially had overcapacity. They could no longer compete in certain industries, and their capacity became excess; they didn't plan it; it just happened.

Mr. GUNDERSHEIM. There is a real question as to the foresight of that. The Japanese have turned around on the apparel industry. At one time, they did phase out portions of it; there is no question. They are rephasing it in. They are spending $160 million on a special project to totally automate the apparel industry to recapture its share of the world market by an entirely new construction system. That $160 million is government—direct government—subsidy in the traditional Japanese targeted fashion. We don't see such efforts.

We are doing the same in the United States on a much smaller scale, but that is being financed by our trade union, by industry associations, and by individual companies.

Senator PACKWOOD. Let me ask you what your source is on the $160 million. I have been searching for that and can't find it.

Mr. GUNDERSHEIM. I will have to get it for you; I have it in my files.

Senator PACKWOOD. All right.

[The prepared information follows:]

MURRAY H. FINLEY
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Secretary-Treasurer
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April 10, 1987

Honorable Robert Packwood
Senate Russell Office Bldg., Room 259
Washington, DC 20510-3702

Dear Senator Packwood:

At the hearing last Wednesday on trade law revision, you asked if I could provide the sources for my claim that the Japanese government was subsidizing the restablishment or revitalization of their domestic apparel industry. I have enclosed the following items:

1) A reporting telegram from the U.S. consulate in Osaka on MITI's establishment of the automated apparel production program and its allocating between 45.5 to 59.2 million U.S. dollars for the project as of 1982. See also paragraph 14 for MITI's reason for going into this program.

2) A copy of the reporting cable from the American Economic Counselor (this is the author's draft) in Tokyo to the Secretary of State giving further details on the MITI automated sewing project. This was picked up by a union official on a special visit there to view the project first hand. You will note his comment in the margin that another $60 million is to be appropriated, which was told to him by the economic counselor in 1984. Thus, the total MITI subsidy is $120 million, not the $160 million I had thought.

I also include two reports to show how other governments are subsidizing the maintenance of their apparel industries rather than phasing them out! First is from the Department of Commerce a report of the Swedish government allocating $74 million to their textile and apparel industries in 1983 for a three year program. Second, is a report from the men's apparel industry newspaper, the Daily News Record, that the EEC is spending $35 million for subsidizing technological innovation in their apparel sector.

Finally, I enclose a descriptive brochure of our own $(TC)^2$ program to indicate that we have been supporting production innovation research here to make our domestic industry the most competitive it can possibly be.

If there is anything further you need, please let me know.

Sincerely,

Arthur Gundersheim
Assistant to the President

AG:wrj

Senator PACKWOOD. But you do agree that there are certain industries that we should simply say we are not going to be able to compete with. There are certain industries we want to keep, and we will. There are certain ones we won't, and that is a managed trade system. You are not recommending we keep them all?

Mr. GUNDERSHEIM. In that equation, though, there has to be a certain balanced economy. One of the problems is that you do have to have some sense that a number of manufacturing industries have to remain here, even though on a global basis they might not be competitive.

Senator PACKWOOD. Which ones? What are some of those?

Mr. GUNDERSHEIM. I could certainly argue textiles and apparel, steel, transportation, machine tools.

Senator PACKWOOD. Let me put it the other way around. What are not some of them?

Mr. GUNDERSHEIM. I am not so sure you could wipe out a total industry.

Senator PACKWOOD. Not wipe them out. Which ones can we phase down? Which ones should we be phasing down?

Mr. GUNDERSHEIM. Oh, there are portions of all industries that can be phased down. That was never my argument, that we ought to be maintaining every industry at the current level at which it is within our economy. I mean, we in the apparel industry have made significant strides in productivity.

Senator PACKWOOD. Mr. Nehmer mentioned the Israeli free trade agreement. What about avocadoes?

Mr. GUNDERSHEIM. I frankly don't know if avocadoes are grown in the United States.

Senator PACKWOOD. In the United States?

Mr. GUNDERSHEIM. Yes.

Senator PACKWOOD. Oh, there is a significant industry of avocadoes in the United States who don't like the Israeli free trade agreement because they don't want imported Israeli avocadoes.

Mr. NEHMER. Senator, if I may say, you referred to what you described as "managed trade." If I may say, I think you are describing industrial policy—industrial policy where a government agency or an Administration chooses winners and losers. Managed trade is a situation where there is a multilateral, possibly even a unilateral control on what can come in and what can be exported.

Yes, we have managed trade, let's say, under the multifiber arrangement. That is managed trade; but the picking of winners and losers—industrial policy—that is quite a step to get to. I think we would have great difficulty in suggesting industries which could be phased out because any manufacturing industry that is able to make a contribution to the gross national product and provide honest employment to Americans who otherwise might not be working should not be phased out. I think we have debated this before, Senator.

Senator PACKWOOD. Yes. I am not sure I quite understand the difference between an industrial policy and managed trade. Through quotas, like the Multifiber Agreement, or tariffs, you can keep certain industries existing in this country, providing honest employment——

Mr. **Nehmer**. It can have that effect. The refusal of the President to provide import relief to the footwear industry, for example—even though it was in the trade area—had an adverse effect on the domestic footwear industry from the point of view of helping its phasing down now.

Senator **Packwood**. Was that an industrial policy or a managed trade decision?

Mr. **Nehmer**. I think the administration was practicing industrial policy in that case.

Senator **Packwood**. Thank you, Mr. Chairman.

The **Chairman**. Thank you. Senator Rockefeller?

Senator **Rockefeller**. I have no questions.

The **Chairman**. Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman. I would like to ask Mr. Gundersheim if he believes that there are other factors involved in the $170 billion trade deficit other than strictly trade matters? In other words, if we filed out a wish list of what you would like us to do, where would we be in trade? Would we have a trade deficit then? Or would we be even?

Mr. **Gundersheim**. There is no question that we ought to somewhere near, obviously. The trade union movement, of which I am a member, and many of the industries which I speak for here today have never shirked from the sense that there is a responsibility to help the economic development of countries that are desperately poor, and that is why we use the phrase "managed trade," that there ought to be a way in which they can use their internal resources to improve their economic situation.

Senator **Chafee**. I wasn't so much thinking about that part. I was just thinking: Are there other factors involved in our trade deficit, other than trade legislation?

Mr. **Gundersheim**. Obviously, if you want to refer to the dollar. I think the industries that are most highly impacted are not affected that much by the dollar. As one of the other Senators, Senator Baucus, was mentioning, the J curve doesn't seem to be going around the bend as much as we had hoped.

Senator **Chafee**. Do you think that there are some things that we can do on a domestic level here in the United States to improve our situation? As I look at these hearings, we are concentrating on trade, but I noted that Senator Hollings quoted the fact that a study had indicated that, of our trade deficit, $40 billion was due to unfair trade practices. And I was wondering if you subscribe to that and thought there were other factors involved besides unfair trade?

Mr. **Gundersheim**. Oh, I——

Senator **Chafee**. Let me present you with a particular problem. I have cited this before. In my particular office, we have 22 people working there, and I have urged them all to buy American cars. As a result of my urgings, 19 of them now drive foreign cars. [Laughter.]

So, I have asked them why. Obviously, they are not proceeding under any fear of me. And the answer is quality, not price; it is quality. Do you think American management in industry is partially responsible for some of our trade deficit?

Mr. **Gundersheim**. Senator, let me answer your question a different way. I would say one of the important factors that helped American car manufacturers improve their quality—and I can certainly attest to it in the Ford that I drive—as been the restraint on Japanese automobiles for the last several years because it provided them the opportunity to make the massive investments and to make the transitions that, if the onslaught would have continued, they never would have made. And I think, in that sense, some trade restraints act as a very positive force.

Senator **Chafee**. But now the trade restraints are off—the voluntary restraints; and so now, we are competing and continue unfortunately to lose market share. I am trying to get the focus here—and not necessarily just from you but from anybody on the panel—on what we might do in the United States to pull up our socks and do other things than complain about the President not being tough enough on trade.

Mr. **Cohen**. Senator Chafee, there are a number of other measures that can be taken; a number of us have alluded to them. For example, we have an export control system in place in the United States that seriously impedes the competitiveness of U.S. companies. I understand that there are proposals before the Congress to make major changes in those rules such that we can export more.

Senator **Chafee**. How about product liability? Every manufacturer that comes to see me complains about the product liability insurance which is a cost of competing. Would you do anything about that? Mr. Cohen.

Mr. **Cohen**. I have not myself been involved in that particular debate. There may well be a number of measures that can be taken in that area.

Senator **Chafee**. What do you say to that, Mr. Gundersheim?

Mr. **Gundersheim**. Senator, you are ultimately faced with the situation in the United States, as I mentioned earlier, that we have certain social goals, and product liability insurance is one. It is designed to protect the ultimate consumer. Now, if Congress wants to make a decision that the pendulum might have shifted too far and maybe the manufacturer ought to be limited in his liability toward the consumer, that is a policy decision that has to be made.

But ultimately, I don't think you can escape the situation that the United States has a developed economy with a standard of living and certain expectations about the quality of life that is different from around the world. And that deserves a certain degree of protection, quite frankly. Obviously, a number of things can be done to make American industry more competitive; we have never opposed that. Our particular union has pioneered in many of those efforts in terms of——

Senator **Chafee**. Could you name some now?

Mr. **Gundersheim**. Oh, absolutely. We have, for example, all of the Xerox plants in the United States under contract. We have a very active joint labor/management program to deal with production efficiency, which is called a quality of work/life situation, which has significantly reduced the production costs in manufacturing for the Xerox Company by literally tens of millions of dollars by our joint efforts.

Second, we are working in the apparel industry. It is a program called Technology Corporation—a textile technology corporation—that we have had for many years that is working to put in an entirely new method of apparel construction developed in the United States in which the union is a major participant, even though we know that the ultimate consequence of that productivity improvement will be less jobs. But the industry will be more competitive.

We have no objections to those kinds of programs.

Senator CHAFEE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Gentlemen, are there further questions of this panel?

Senator PACKWOOD. Yes, I just have one.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Could you get me that $160 million information by a week from Monday?

Mr. GUNDERSHEIM. Oh, yes. I will have that by tomorrow.

Senator PACKWOOD. Thank you very much. I appreciate it.

The CHAIRMAN. Thank you, gentlemen. We appreciate your testimony.

Mr. GUNDERSHEIM. Thank you.

The CHAIRMAN. Let me cite once more the sequence of arrival of Senators; and it is Danforth, Baucus, Packwood, Heinz, Rockefeller, and Chafee. This panel will consist of Mr. Dexter Baker, who is a Chemical Industry Trade Adviser and chairman of the board of Air Products & Chemicals, Inc.; Mr. John Andrews, President of the American Natural Soda Ash Corp. Mr. Jack Valenti, president and chief executive officer of the Motion Picture Association of America; Mr. Milledge Hart, chairman of the board of the Hart Group and chairman of H.C. International Trade, Inc.; Mr. Matthew Coffey, president of the National Tooling and Machining Association; and Mr. Robert McElwaine, president of the American International Automobile Dealers Association.

I want particularly to welcome my old friend, Mitch Hart, a longtime friend of mine from Texas.

Mr. HART. Thank you, Senator.

The CHAIRMAN. Mr. Hart is a very distinguished businessman in our State. Mr. Dexter Baker, a longtime friend of mine representing the chemical industry, Senator Heinz wanted to join in that welcome to you, and I am putting his statement in the record in that regard.

Mr. BAKER. Thank you.

The CHAIRMAN. Mr. Hart, why don't you lead off?

STATEMENT OF MILLEDGE A. HART III, CHAIRMAN OF THE BOARD, THE HART GROUP AND CHAIRMAN, H.C. INTERNATIONAL TRADE, INC. [HCI], DALLAS, TX

Mr. HART. Good morning, Mr. Chairman. I am Milledge A. Hart III, and I am here today on behalf of H.C. International Trade, HCI, of Dallas, Texas, a subsidiary of the Hart Group of which I am chairman. Joining me today are Mr. Robert Foster, president of HCI, and Mr. William Evonsky, vice president for trade programs with HCI and the author of a recent study on China, commissioned by the U.S. Council on United States/China Trade.

HCI International Trade, which I will refer to as HCI, is a trading company which is modeled after the traditional British international trading companies. That is to say, HCI is not merely a broker as are many if not most American companies involved in this field. Rather we take a position in the goods that we move; and more particularly, we specialize in developing financial solutions for U.S. exports.

For example, in order to sell construction equipment to South America, a seller may be required to take a raw material, such as iron ore, for payment. This may require that same company to sell the iron ore to a second country, such as China, which may in turn require the company to take payment in goods produced in that country, such as finished construction materials. HCI is currently involved in two and three country barter transactions in South America, the Middle East, and the Far East. In each case, the normal business flow involves the exportation from the United States of medium to high technology goods which are then paid for by the importation into the United States of relatively low technology goods.

Recently, HCI has focused heavily on the People's Republic of China; and indeed, Bob Foster just returned on Sunday from a 3-week business trip to the PRC. HCI has chosen to focus on China due both to China's obvious long-term potential as a trading partner but also to the country's shortage of foreign exchange. During this period, we have formed close personal and business relationships with various ministries, including the Ministry of Foreign Trade, and the import/export corporation of both China International Metals and Minerals and China National Machinery.

Specifically, these government officials have expressed concern about provisions of the trade bill dealing with antidumping and countervailing duties and recent applications of Section 406, which we have described in our written testimony. Officials at MOFT have requested us to raise these concerns before this committee.

Our depth of involvement with Chinese businesses and the closeness of these relationships have helped us to develop a very real world view of the opportunities and the problems of dealing with the PRC. One central obstacle for many American businesses from expanding what can be sold to China and what can be exported out of China is the inapplicability of the current American trade laws to the People's Republic.

I am here today as an American businessman to address only this one central issue: how these trade bills will affect United States/China trade and to urge action which I firmly believe will result in greatly increased business opportunities for American businesses. All of this can be accomplished in a manner which is consistent with the twin goals of generally increased international trade and the improvement in the U.S. balance of trade.

Fifteen years after the opening of relations with the People's Republic of China, a great untapped market for American goods and services still exists. The current trade level represents only a fraction of the potential, yet if trade between the two nations is to grow, China must continue to obtain much needed hard currency by which to purchase American products. Necessarily, one important means for China to obtain such currency is by selling its own products in the United States.

Over the last few years, China has tried to develop niches where its economy could produce goods marketable here. Low labor costs have led to successful marketing of such products as shop towels, wax candles, nails, printcloth, and paint brushes. But every time the Chinese have developed a niche, the U.S. Government has found them to be dumping. As a result, there is a very real threat of decreasing trade between the two countries in the years ahead.

The cause of recent dumping orders is not that China is unfairly selling into the United States. Rather, it is the application of an antiquated Commerce Department provision in the current antidumping law. As applied to the PRC, this law ignores the real cost advantage that China has in certain types of product. China does not conveniently get into the niche of a state-controlled economy such as that of the Soviet bloc, yet we are pushing China back into that niche.

For example, prior to the finding of dumping and the subsequent voluntary restraint agreement, we bought nails from two different provinces and secondarily dealt with MinMetals, the national government body which coordinated manufacturing and exportation of finished metal products under China's recent liberalization of foreign trade decision making. Currently, with the voluntary restraints, we are forcing the PRC to use the national government body, MinMetals, which automatically recentralizes control of the economy, lessens competition and increases the price of goods.

We are totally defeating our own purposes. If we want to ship and sell more goods to China, then we must provide a means for them to sell their low-technology goods to us.

Otherwise, they won't have the hard currency to buy construction equipment, commercial aircraft, tools, medical equipment, and other medium-technology goods. Our basic conclusion is clear.

First, the antidumping laws should not be amended to create an artificially high benchmark price not reflective of China's actual cost. Second, the countervailing duty laws should not be applied to state-controlled economies for the reasons stated by the courts and Commerce.

Third, China is unique among the nonmarket economies and should not be subject to an easier application of Section 406. Finally, we recommend that the Department of Commerce be directed to use its rulemaking authority to develop an effective methodology which fairly reflects economic reality.

Mr. Chairman and members of the committee, I appreciate the opportunity to testify. Thank you.

The CHAIRMAN. Thank you very much, Mr. Hart. Mr. Baker.

[The prepared statement of Mr. Hart follows:]

H.C. INTERNATIONAL TRADE, INC.

Testimony of
Milledge A. Hart III

April 8, 1987

IMPLICATIONS OF TRADE LEGISLATION ON TRADE RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

I. Introduction

I am appearing here today on behalf of H.C. International Trade Inc. ("HCI"), a subsidiary of the Hart Group of which I am Chairman. With me are the President of HCI, Robert Foster, who returned from China on Monday, and William Evonsky, Vice President of Trade Programs for HCI and the author of a recent study on China commissioned by the National Council for U.S.-China Trade.

My testimony concerns the possible adverse effects that proposed legislation will have on trade relations with the People's Republic of China ("PRC"). I am pleased to have this opportunity to share with you a businessman's perspective on trade with the PRC, in the hope that you will proceed with caution in enacting legislation that might seriously deter recent economic reforms in the PRC and which would further exacerbate the difficulties which American companies already have in developing this enormous potential market.

While HCI's trade relations with the PRC are relatively new, we have made great strides and have established strong ties with the Chinese. At present, HCI is a major exporter of building products from the PRC, for example with contracts on 10,000 tons of nails for this year. We are currently in the process of placing orders for hardware tools and home recreation goods for exportation.

In 1985, there was approximately $8 billion in trade between the United States and the PRC. However, trade leveled off in 1986. We believe that one of the reasons for this slowing of trade has been China's reaction to a rash of U.S. dumping cases successfully brought against it in recent years. They have been frustrated and angered with what they have considered to be a very unfair application of U.S. trade laws - the use of the "surrogate country" method. Because of this uncertainty, the Chinese have pulled back from attempting to expand trade with the U.S. and have refocused their energies on the countries of Western Europe and Japan.

The main focus of our testimony is that current law severely restricts China's ability to sell into the United States, and, as a result, American exporters are finding it increasingly difficult to sell to China because the PRC does not have the hard currency to purchase U.S. goods.

Many of the proposals which Congress is now considering will result in even less trade with China in the future.

Because the PRC is of vital strategic importance to the U.S., as well as a huge potential market for U.S. goods, it is in the best interests of both the United States and the PRC to evaluate how U.S. trade laws (especially the dumping and countervailing duty laws) affect the trading relationship between the two countries. We call today for a review of these laws with an eye towards changes which will treat China fairly and foster further trade between the two nations.

II. COMPARISON OF TRADE BILLS AS THEY AFFECT THE PEOPLE'S REPUBLIC OF CHINA.

A. Antidumping provisions

The current Antidumping Law was enacted as Title I, Section 101 of the Trade Agreements Act of 1979, 19 U.S.C. 1671-1677g. For market economies, the Antidumping Law provides, in its simplest terms, that if a foreign manufacturer is selling goods in the United States at less than fair value, i.e. less than the amount it charges for the same goods in the home market, and such sales cause or threaten material injury to a U.S. industry, or materially retard its establishment, then an antidumping duty shall be imposed upon imports of that product from the foreign country in question. The dumping duty equals the amount by which the foreign market value exceeds the U.S. price.

The Antidumping Law prescribes special rules for determining foreign market value in cases where the Secretary of Commerce determines that the economy in question is state-controlled to such an extent that sales of merchandise in that country or to third countries do not permit the determination of foreign market value in the usual manner. In such cases, a state-controlled economy shall be found to be "dumping" if the imported price is less than the price at which the ~~closest~~ market economy (a surrogate market economy at a comparable stage of economic development) is selling into the United States. If Commerce is dissatisfied with this approach, it can alternatively use as its estimate of the foreign market value a "constructed value" based upon the cost of the factors of production in the surrogate country plus a reasonable profit (e.g. the cost of wire in Korea might be used as the cost of wire in China).

Under current law, the world's economies are viewed as black or white. Either a country is state-controlled or it is not. Where it is not state-controlled, the rules for market economies apply; where it is state-controlled, the surrogate country methodology is used. For a country such as the PRC, whose economy clearly falls within a gray area under any realistic view, this bright-line approach can be devestating.

Because the rules for finding dumping against state-controlled economies are so favorable to the petitioners, a holding that an economy is state-controlled can result in the substantial diminishment of trade between the United States and that country. Once a country's economy is found to be state-controlled in one case, it becomes ready prey for other petitioners in other industries who immediately recognize that they can easily obtain the imposition of a dumping duty on other imports from that country. This result is exactly what has happened to the PRC.

Over the last few years there were 14 cases in which China was found to have been dumping. Six of these cases were brought in 1985 alone. Despite the obvious distinctions between China's economy and others which Commerce has decided are state-controlled (e.g. the U.S.S.R., Poland, North Korea, Cuba), China has been unsuccessful in attempts to prove that it is not a state-controlled economy.

The International Trade Administration (ITA) has held in cases against China that Italy, Korea, Japan, Switzerland and the United Kingdom were appropriate surrogates even though these countries are substantially more developed economically than China and typically have higher costs of production. The ITA was nevertheless required to use such countries because of the unavailibility of reliable data from other more comparable countries for the products in question. The result has been that the assumed foreign market value in China has been held to be much higher than economic reality indicates.

Respected individuals both in and out of Government have recognized that the use of the current surrogate methodology is at best arbitrary. Even when information from a comparable country is available, there may be differences in actual costs (e.g. labor, material, energy, transportation) for the particular industry involved. In such cases, any comparison is meaningless. ***For China, in particular, the surrogate methodology virtually ignores the cost advantage which China has in labor as compared to most possible surrogates.***

a. The House Bill.

The House Bill (H.R. 3) as reported by the Ways and Means Committee makes no changes in the current law as it relates to dumping. However, the Committee deleted a provision from the bill as reported to it by the Subcommittee on Trade which would have replaced the surrogate country methodology with a pricing benchmark based on the average import price of the eligible market economy supplier whose average import price is the lowest of all eligible market economy suppliers. Under this provision, dumping would be found whenever a Non-Market Economy ("NME") imported into the United States at a price below this benchmark.

b. The Senate Bill.

The Senate Bill (S. 490) also attempts to establish a benchmark pricing method. It authorizes Commerce to determine foreign market value on the basis of the average price at which comparable merchandise from the eligible market economy with the largest volume of sales in the United States is sold at arm's length in the United States during the most recent period for which information is available. Where such information is not available, Commerce is to use the constructed value approach with surrogate country data. The Senate Bill also contains language directing Commerce to evaluate various factors in determining whether a particular country should be treated as an NME.

c. The Administration's Bill

Finally, the Administration's Bill (S. 539, H.R. 1155) adopts a benchmark pricing method similar to that which was contained in the House Ways and Means Subcommittee Bill (i.e. lowest average price).

d. Third-party proposals

In addition to the foregoing, the Committee for Fair Trade with China ("CFTC") has proposed that a new category be established called "planned market economies" ("PME"), which would include China. Various conditions are established by which an NME can qualify for PME status. Under the proposal, a PME could avoid a finding of dumping if it can show that its "actual costs" were less than the imported price. "Actual cost" would be determined by the price the PME attributed to a component if Commerce were convinced that the price was based on market factors. Where Commerce finds that market factors did not establish the price of a component, it is to use a "representative world price." If Commerce finds that it can not establish a fair price under this methodology, it then can use the "lowest average import" price as contained in the Administration's Bill.

e. HCI's view

HCI strongly believes that the current surrogate methodology is unworkable and unfair both to the PRC and the American companies that are trying to export from or import to China. It is obviously unreasonable to compare countries such as China with Korea, Italy and the like, as has happened under the surrogate approach. Such a method results in a foreign market value well in excess of China's actual cost.

Moreover, since the ITA can use one surrogate country for its initial ruling and a second surrogate when it makes its annual review (to determine whether sufficient duty has been withheld), importers such as HCI have no way of estimating what the ultimate duty will be from one year to the next. For example, Korea was used as a surrogate in a recent nail dumping case. The Commerce Department, however, may elect to use a different surrogate country when it performs its annual review this May of the duties imposed. As a result, China may price its products based on the Korean price, only to find that a different surrogate country is ultimately used by Commerce. Such a change in the surrogate has happened in at least one China dumping case within the last year.

On the other hand, the benchmark pricing methods currently contained in S. 490 and S. 539 would not improve this situation. Such benchmarks are by their very nature arbitrary and do not account for the very real price advantage China has in certain products. Moreover, it is doubtful that the ITA will find the benchmark method any easier to administer than current law, since it will be difficult to obtain information concerning the quality, style, and different delivery times of products in order to make an accurate calculation of the benchmark price of a particular product. The need for accurate comparison of products would be very important to companies such as HCI since the quality of the same goods made in different markets can vary widely even for the most basic of commodities. Necessarally, such variation is typically reflected in the price of the goods.

HCI believes that there are many meritorious alternatives to the surrogate and benchmark methodologies including the CFTC proposal. While we appreciate the hesitancy of Congress to create a special exception for China, the reality of the situation is that the PRC is not like the traditional state-controlled economies. The Chinese economy is not purely planned like those of the Soviet bloc because certain economic decision-making authority is decentralized and the provinces have a degree of autonomy in respect to foreign trade. HCI's experience in purchasing nails clearly illustrates this distinction.

In buying building materials from a Soviet bloc country, HCI negotiates with a single centralized entity having a virtual monopoly on all exports of that product. Our task is not as "easy" in the PRC, as the decentralization of decisionmaking authority requires us to go to different provinces to negotiate our purchases. Because of their autonomy, the provinces are able to set prices different from and independent of each other. If you will, the influence of market forces in the setting of prices among different provinces signals a vast distinction between the PRC and other non-market economies. This important distinction could justify granting different treatment to China than that given to Soviet bloc economies where market forces play little, if any, role.

B. The Countervailing Duty Law

a. Background

The Countervailing Duty Law, 19 U.S.C. Section 1330, was also added by Title I, Section 101 of he Trade Agreements Act of 1979. In essence, the Countervailing Duty Law provides that if the Department of Commerce determines that a country is providing (directly or indirectly) a subsidy in the manufacture, production, or exportation of merchandise imported for sale into the United States, and such activity results in an injury to a domestic industry, then a countervailing duty equal to the amount of the net subsidy shall be imposed upon such merchandise in addition to any other duty to which it is subject. Unfortunately for countries such as China, the injury element of the law only applies to countries who are signators to the GATT Subsidies Code. For non-signators, a petitioner need only prove that a subsidy exists in order to be entitled to the imposition of a duty.

A subsidy under the Countervailing Duty Law includes preferential treatment by a government towards an industry where such treatment is different from treatment that the recipient would otherwise receive in the marketplace. For example, domestic subsidies include such items as cash grants, loan guarantees, and tax exemptions and other monetary benefits to particular industries or companies. Export subsidies include direct payments to export firms, practices which involve a bonus on exports (i.e. currency retention schemes), internal transport and freight charges on export shipments on terms more favorable than for domestic shipments, and the like.

b. Application of the Countervailing Duty Law to State-Controlled Economies

The Court of Appeals for the Federal Circuit has determined that the Countervailing Duty Law does not apply to state-controlled economies. Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). The court upheld a Commerce Department ruling that the concept of a subsidy in the state-controlled economy context was inappropriate. See, Carbon Steele Wire Rod From Czechoslovakia, Final Negative Countervailing Duty Determination, May 1, 1984 and Carbon Steel Wire Rod from Poland, Final Negative Countervailing Duty Determination, May 1, 1984, (49 FR 19370 & 19374). According to the court and the Department of Commerce, in a state-controlled system the Government does not interfere in the market but supplants it, leading to the conclusion that subsidies have no meaning outside the context of a market economy.

c. Comparison of Bills

S. 539 contains a provision codifying the Georgetown Steel and Commerce Ruling. H.R. 3 contained a similar provision as submitted by the House Ways and Means Trade Subcommittee but it was deleted by the full Committee, and an amendment was passed that provides that countervailing duties shall apply to non-market economy countries.

d. HCI's position

HCI believes that the conclusion of the Federal Circuit and the Department of Commerce was correct. If an economy is state-controlled or state planned then, by definition, the government is making market decisions. Domestic producers are protected from distortions of market forces in this situation by the lenient standard now existing for finding dumping by state-controlled economies. It would constitute a double penality to also apply the Countervailing Duty Law to such a country (even if there were a method by which Commerce could determine what constituted an unfair subsidy in a state-controlled context).

Such a rule would be especially egregious to a country such as China which is making some moves towards a market economy. As China assumes more attributes of a free market, it is likely that a number of cases will be brought by petitioners alleging that the state-controlled aspects of the system constitute a subsidy, i.e. the governmental actions will be highlighted against the backdrop of the free market aspects of the economy. At the same time, however, China will still be judged under the more lenient dumping standard given petitioners in cases brought against state-controlled economies. Such a double sanction would undoubtedly increase the PRC's justified belief that the United States is treating it unfairly.

III. RECOMMENDATIONS

a. Need For Change

From the perspective of an American businessman trying to export from and import to China, two major problems have been caused by the rash of successful dumping cases which have been brought against the PRC. First, China has found it increasingly difficult to sell its goods in the United States. ***Every time it begins to develop a niche, be it shop towels, wax candles, nails, printcloth or paint brushes, it has been slapped with a dumping order.*** As a result, China is unable to obtain the hard currency which it needs to purchase American made goods. For example, we are aware of one very recent case in which an exporter of wood from the United States to China lost a major sale when the PRC was unable to obtain the hard currency necessary to carry out the purchase.

Second, the United States has lost credibility in its efforts to further trade relationships with China as a result of the current dumping orders against the PRC. The PRC believes that the United States is unfairly applying its laws against China. It perceives the dumping decisions comparing the PRC to such countries as Korea and the United Kingdom as surrogates to be so irrational that it calls into question the sincerity of the Commerce Department itself. At a minimum, Commerce's decisions have reduced the incentive for China to acceed to United States requests that it change its laws in order to foster trade between the two countries.

In virtually every dumping case, the ITA has been forced to use data from a market economy much more developed than China because such a country was the only one from which the ITA could obtain data. While this would suggest that some downward adjustment should be made to the surrogate country's prices or costs, under current law and practice, the ITA does not make such an adjustment and, therefore, the foreign market value ultimately determined has little relation to China's real cost. As a result, in virtually every case in which a dumping petition has been filed against China, Commerce has found that China was selling below foreign market value.

b. Suggested Action

The ideal solution for this conflict would be for countries such as China to be able to supply actual real costs to the Department of Commerce, as was recommended by the Council for Fair Trade with China. We recognize, however, that the Department has stated that from an administrative point of view, actual costs may be difficult to verify and, therefore, administratively infeasible. In economies which are in transition, such as the PRC, however, we believe such a method would not be impossible. In any case, Congress should authorize Commerce to use its expertise to establish, through the rulemaking process, the fairest foreign market value by using all information available to it.

While Commerce's rulemaking may result in a number of viable alternatives, one method which should be studied would be to allow the Department of Commerce to use its discretion to adjust value when the closest market economy from which data can be obtained is significantly more developed than countries such as China. For instance, if some prices within an NME may actually be set by market forces, ITA should be able to use them; or, if the closest market economy has a per capita GNP that is three times the per capita GNP of China, then China's foreign market value should be deemed to be some percentage less than that of the more developed country.

Such a directive by the Congress would accomplish several very important goals:

(a) It would call upon the expertise of the Department of Commerce to develop guidelines, through a process that would provide sufficient opportunity for input from concerned citizens, and other countries, all over a period of time that would allow reasoned development of the new rules;

(b) It would save Congress from having to write new rules itself; and,

(c) It would preserve the opportunity for expanded trade between the two countries rather than having it significantly and sharply diminished by the protectionist "benchmark" methods.

Regarding the Countervailing Duty Law, HCI believes that Congress should express its approval of the Georgetown Steel opinion and the Commerce Rulings upon which it is based.

H.C. INTERNATIONAL TRADE, INC.

SUPPLEMENT TO

Testimony of
Milledge A. Hart III

IMPLICATIONS OF TRADE LEGISLATION ON TRADE RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

I. INTRODUCTION

The initial written testimony submitted by H. C. International Trade, Inc. ("HCI") for the Finance Committee's April hearings on the pending omnibus trade bills focused upon antidumping and countervailing duty provisions. As a result of developments subsequent to the preparation of this testimony, and in response to questions raised during the Hearings, HCI respectfully submits the following additional comments.

II. AMENDMENTS TO SECTION 406

There are no provisions in S. 490 which would change Section 406, and HCI supports the retention of Section 406 of the Trade Act of 1974 in its current form.

Section 135 of H.R. 3, as amended, however, amends Section 406 of the Trade Act of 1974 to lower the test for establishing market disruption. Under Section 406 as currently in force, the President is authorized to provide temporary import relief in the form of tariffs or quotas if rapidly increasing imports from a Communist country are a significant cause of a market disruption resulting in material injury. ~~Under~~ Under amended H.R. 3, the United States Trade Representative (rather than the President) must grant relief (unless it will have a serious negative impact on the domestic economy) if imports from a non-market economy (rather than a Communist country) are an "important " (as oppossed to "significant") cause of the market disruption.

There have been four Section 406 cases directed against the People's Republic of China. They involved such commonplace and non-essential items as work gloves, clothespins, ceramic kitchenware and canned mushrooms. There was an affirmative determination in only one case (clothespins in 1978) and in that case the President denied relief.

HCI believes that lessening the standard for a Section 406 violation, especially as it relates to China, is inappropriate in three respects. First, it is tautological that when the United States opens-up trade with a new partner such as China, there will be a "rapid increase" in imports from that country. After all, the starting point for trade is zero, therefore virtually any increase will be percieved as rapid. Accordingly, China will be a ripe target for domestic industries if Section 406 is made more easily violated.

Second, many non-market economies, not just China, are moving towards a more free-market orientation. As a company with established trading relationships with many Communist countries, HCI believes that amending Section 406 would be the wrong signal at the wrong time. The opponents of reform in such countries would seize upon the granting of relief under an amended Section 406 as proof that more control of the market is needed. HCI has already seen this result regarding China where the response to the recent rash of dumping cases against it has led to more centralization. Accordingly, rather than easing the Section 406 standard, HCI would suggest that Congress abandon the discrimination against Communist countries and direct the USTR to use Section 201 whenever relief aginst a non-market economy is required.

Finally, if Congress should determine that a tougher Section 406 standard is needed, HCI believes that China should be excluded from operation of the statute. Underlying the enactment of Section 406 was a belief that Communist countries would intentionally manipulate their economies to cause harm to the United States. Irrespective of whether this might be true for certain Communist countries, there is no indication whatsoever that China has any intent other than to sell at a fair price the few products in which it has a competitive advantage. This fact, as well as the other two factors set forth above, suggests that the People's Republic should be excepted from Section 406. The strategic importance of China to the United States and its potential as a market for U.S. goods, further supports such an exclusion.

III. WORKER RIGHTS

S. 490 does not include any language relating to worker rights and HCI believes that the inclusion of such a provision would be unwise.

Section 121 of amended H.R. 3, however, amends section 301(e)(3) to include in the definition of "unreasonable" any act, policy or practice that denies to workers the right of association; denies to workers the right to bargain collectively; permits any form of forced or compulsory labor; fails to provide a minimum wage for employment of children; and, taking into account the country's level of economic development, fails to provide standards for minimum wages, hours of work and occupational safety and health.

Based on HCI's experience in international trade, it believes that serious disruption of trading patterns will occur throughout the world if the United States attempts to impose its standards of labor fairness on third countries. For political and economic reasons, many of our current and potential trading partners will simply not agree to certain labor practices even if it means losing the U.S. market. As to China itself, however, within the last year it has already adopted regulations greatly enhancing the rights of workers in the People's Republic.

HCI also believes that the amendment may have many unintended effects. For example, even trading partners who appear to meet the amendment's standards may in reality fall short. While many countries allow unions, in some instances the unions are so employer-assisted ("captive unions") that they lack the true ability to bargain collectively in the American sense.

Moreover, as the proposed amendment relates to China, HCI is concerned that domestic producers will use such a provision as another tactical tool to disrupt trade between China and the United States. As is often noted, the cost to the respondent in a Section 301 action can be tremendous regardless of the merit of the complaint. While HCI believes strongly in the importance of worker rights being recognized internationally, the inclusion of Section 121 of H.R. 3 into the Omnibus Trade Act would be counterproductive to the goal of opening up markets throughout the world.

STATEMENT OF DEXTER BAKER, CHEMICAL INDUSTRY TRADE ADVISER AND CHAIRMAN OF THE BOARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR PRODUCTS & CHEMICALS, INC., ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION, THE NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION, THE SOCIETY OF THE PLASTICS INDUSTRY, INC., AND THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION, ALLENTOWN, PA

Mr. BAKER. Good morning, Mr. Chairman and members of the committee. I am Dexter Baker, chairman and chief executive officer of Air Products & Chemicals. I also serve as the Chemical Industry Trade Adviser. I would like to thank the committee on behalf of the Office of the Chemical Industry Trade Adviser—OCITA for short—for the opportunity to present the views of the chemical industry.

The chemical industry's 1986 shipments exceeded $216 billion. More than $22 billion of these shipments were exported, which helped to provide a positive chemical sector trade balance of $7.6 billion in 1986. Over the last several years, our industry has created a solid position to compete on a level playing field with the biggest and the best of our international competitors in their home markets.

But regardless of how strong we are, we will not be able to continue to export competitively or invest competitively if the rules of the international trade game are one-sided and do not provide U.S. industry the same access to foreign markets which the United States offers to foreign producers and investors. Undoubtedly, you have heard this complaint many times before; but it seems to me if one of our most internationally oriented, most successful industries in the international marketplace is having difficult competing abroad and investing abroad, then our country really does have a problem.

OCITA believes that the provisions of S. 490 offer better opportunities for U.S. industry, including chemicals, to operate worldwide in a climate of fair competition. OCITA also believes that the Uruguay MTM round offers a unique opportunity for the United States and the chemical industry to expand our exports, increase our investments and trade and services around the world. The United States offers an open market system available to all importers and investors.

Accordingly, we believe that our primary emphasis—the MTM—should be to improve the market access for U.S. products in other countries, to establish a GATT international code that includes provisions for national treatment of United States and other foreign investments, and to improve the protection and enforcement of our intellectual property rights, and to strengthen the GATT dispute settlement mechanism with effective, time-certain provisions.

The Uruguay round should not be devoted primarily to just a tariff-cutting exercise. While we are prepared to support reductions of our domestic chemical tariffs on a product by product basis in return for similar concessions on chemical tariff reductions abroad, we do not believe that the tariff cuts by themselves will provide any significant opportunity to reduce the large U.S. trade deficit.

Tariff cuts must be accompanied by negotiated, implemented, and enforceable agreements to abolish trade distorting nontariff barriers that now encumber the world trading system. The key words here are "enforceable" and "abolish." OCITA believes that the recent growth of foreign nontariff barriers has been caused in part by the negotiated reductions of our global-wide tariff system.

Unless codes governing nontariff barriers can be strengthened and made enforceable, we in the U.S. will suffer erosion of domestic market share and profitability without gaining any access abroad.

OCITA also asks that the tariff proclamation authority provide for a mechanism to allow a company to prove that a particular product or group of products is import-sensitive. These items should then be exempted from tariff cuts. OCITA is prepared to provide suggested legislative language which would create such a mechanism.

OCTIA's written statement also urges the adoption of a measure which establishes an administrative procedure whereby a manufacturer may request a temporary suspension of duties and imports of products which are noncontroversial and noncompetitive. This procedure would supplement rather than replace the current Congressional system. Petitioners would be free to use whichever of the two systems they found to be more advantageous.

OCITA's written statement further elaborates on the improvements needed for the protection of intellectual property rights and on the proposed changes to Section 232 of the Trade Expansion Act of 1962 which is covered by Title V of 490. We have also offered suggestions in our written statement to define actionable practices of industrial targetting and how this should be addressed under Section 301.

The last issue raised by OCITA's written statement deals with the regulation of preshipment inspection companies, a matter not addressed by S. 490. OCITA finds that the current practices of preshipment inspection companies is unacceptable, especially with regard to the examination of contract prices freely agreed upon between the parties at arm's length.

Many of these practices cause unnecessary disruption of the flow of goods and place additional cost on U.S. exporters.

I thank the committee for the time to present the views of OCITA and the four member trade organizations, and I will be glad to answer any questions in due course. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Baker, and we will have a round of questioning from those who are here when we have completed the list here.

Mr. Andrews is the president of the American Natural Soda Ash Corp. Would you proceed, please?

[The prepared statement of Mr. Baker follows:]

STATEMENT

OF

THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

INTRODUCTION

This statement is submitted on behalf of the Office of the Chemical Industry Trade Advisor, OCITA. OCITA was organized before the Tokyo Round. It is a coalition of the Chemical Manufacturers Association, the National Agricultural Chemicals Association, the Society of the Plastics Industry, Inc., and the Synthetic Organic Chemical Manufacturers Association. It represents more than 2200 companies engaged in the manufacture and distribution of the products of the chemical industry and its allied sectors.

In this statement OCITA outlines a set of principles which we believe should be addressed by the Congress in granting the Administration authority to participate in the Uruguay Round of multilateral trade negotiations (MTN). OCITA believes that the emphasis in the Uruguay MTN round should not be primarily on tariff cutting. Additional tariff cuts by themselves will not provide the opportunity to reduce the current U.S. trade deficit. Tariff cuts must be accompanied by the implementation of enforceable agreements which abolish non-tariff barriers and trade related practices that encumber open and fair trade.

These barriers and practices include foreign market access, trade distortions caused by foreign investment practices, ineffective protection of intellectual property rights and the lack of an effective procedure for settling disputes arising from international trading rules. OCITA urges that the principles listed in section I of this statement be considered for U.S. negotiators participating in the Uruguay Round.

This statement also addresses the issues of protection of intellectual property rights, targeting or an issue to be addressed by Section 301, the strengthening of Section 232 of the Trade Expansion Act of 1962, the addition of a administrative procedure for the temporary suspension of tariffs to supplement the current legislative procedure, and the regulation of preshipment inspection companies.

I. MULTILATERAL TRADE NEGOTIATION AUTHORITY

A. U.S. Negotiating Policy

The Uruguay Round must foster the development of sound trading and investment practices. U.S. participation in the Round should include as priority objectives the elimination of trade distoring practices and the expansion of U.S. export opportunities. The international trade interests of the United States should be given priority over foreign policy concerns in negotiating agreements during the MTN. Foreign policy concerns, other that those of a national security nature, should not affect decisions on U.S. trade policy.

Adequate and timely opportunities should be provided for U.S. chemical industry advisory input and review during the process of extablishing negotiating objectives, as well as during the negotiations themselves. Moreover, OCITA strongly urges that ample opportunity be provided for the private sector to comment, and for Congress to debate and amend any tentative agreements made in the negotiating process, before the negotiated agreements are submitted to the Congress for approval.

MTN authority should not restrict the President from conducting separate trade negotiations with other countries during the course of an MTN. In addition, the Administration should not impair the implementation and timely resolution of actions brought under existing U.S. trade remedy laws during the course of MTN negotiations.

B. GATT Dispute Settlement Procedures

OCITA believes that the GATT dispute settlement procedures must be improved to include binding, time-certain requirements for the resolution of disagreements on issues covered by GATT rules. Resolution of disputes already taken to GATT should be one of the first steps in this process.

C. Foreign Market Access

OCITA maintains that GATT signatory countries should be required to grant U.S. exporters fair access to their markets without unreasonable barriers or conditions, in exchange for their retaining fair access to U.S. markets.

D. Tariff Negotiations

As already stated, the emphasis of a new Round should not be on tariff cutting. The reduction, or even the elimination, of tariffs on some chemical products may be appropriate, while reductions of tariffs on others may impose an undue burden on U.S. manufacturers. We urge, therefore, that any reductions which are proposed be well-justified, modest, and phased in over an appropriate period of time.

Furthermore, OCITA believes the United States should negotiate changes in chemical tariffs only on the basis of request lists, rather than imposing formula cuts across the board or automatically eliminating tariffs below certain levels. Also, reduction or elimination of chemical tariffs should not be offered in exchange for concessions in non-chemical sectors.

OCITA urges that any U.S. plan to reduce or eliminate tariffs should include provisions enabling affected industries to obtain exceptions for import sensitive products. We believe that these conditions should be included in any legislation authorizing U.S. participation in the MTN and, specifically, in legislative language providing tariff proclamation authority for the Uruguay MTN Round.

OCITA has drafted proposed legislative language which will be made available to the Finance Committee which would accomplish three negotiation objectives: 1) ensure tariff reciprocity within industry sectors to the maximum extent possible; 2) ensure that the President will conduct tariff negotiations on the basis of article specific request and offers, not formulas for across-the-board tariff reductions; and 3) provide exemptions from tariff cuts for import sensitive items.

As defined in OCITAs proposed legislative language concerning the last objective, we endorse language which would amend sections in Title I of the Trade Act of 1974, to:

1) Require the U.S. International Trade Commission (USITC) to determine whether a negotiated duty reduction on an article the President wishes to negotiate will seriously injure domestic producers of a directly competitive article (The USITC will make such a determination only if it has reason to believe such injury will occur or a domestic company files a petition alleging that it will occur);

2) Require a public USITC hearing in such an investigation;

3) Prohibit the President from implementing a duty reduction the USITC determines will seriously injure the domestic industry, unless he determines such a reduction is in the interest of national security;

4) Require a public explanation for overriding any USITC injury determination; and

5) Prohibit the President from including a duty reduction in a "fast track" trade legislation if the USITC determines the reductions will seriously injure domestic industry, and the President does not override that determination.

OCITA drafted this language as an amendment to S. 490. The OCITA legislative language could, of course, be easily adapted to amend any other pending trade legislation, or it could be introduced independently. We urge the Committee to include the concepts contained in this OCITA proposal in its trade reform bill.

E. Foreign Investment Practices

OCITA believes that a GATT code on foreign investment practices should be negotiated among the signatory countries. Such a code should be based on national treatment for foreign investments and should ensure the elimination or substantial reduction of trade distortions caused by foreign investment practices, inlcuding:

1) Prohibitions or restrictions on foreign investment in certain economic sectors, such as chemicals;

2) Review of foreign investment proposals by government agencies and limitations on the amounts and percentages of equity that can be owned foreigners;

3) Performance requirements, including mandated local purchase of equipment, supplies, and services, and the share of production which must be dedicated to exports;

4) Limitations on royalties and licensing; and

5) Limitations on repatriation of earnings.

II. INTELLECTUAL PROPERTY RIGHTS PROTECTION

A. Background

U.S. manufacturers enjoy strong protection of intellectual property rights at home. It is this protection that offers the incentive to dedicate significant resources to develop and commercialize new products. The protection of proprietary data provides sufficient time to recoup the high research and development costs in many sectors of the chemical industry. Lacking other commercial considerations, the U.S. manufacturer has a strong incentive to export goods to those offshore countries which have intellectual property protection laws similar to those in the United States. Such similar lawshelp increase exports and product development efforts because the reward potential is not confined to the domestic market alone.

Given appropriate commercial circumstances, the U.S. manufacturer will also export to countries with inadequate property right protections and may achieve adequate returns. He does, however, run the risk of a third party deciding to duplicate the product or data and manufacture it himself. In the absence of strong intellectual property protections, this pirating activity is common. Typically, the "pirate" has an economic advantage because he has not incurred the research and development costs borne by the original inventor. Consequently, he is able to market the product at prices that are significantly less than those of the U.S. manufacturer. The "pirate" may try to extend sales to other countries with weak intellectual property rights protection, further undercutting the U.S. manufacturer's overseas market. In addition to research and development costs, the U.S. manufacturer is likely to have devoted more resouces to the development of a foreign market than would be needed to establish a domestic market. He is, therefore, likely to be deterred from attempting to establish a market in countries where weak patent or trademark protection exists. Any trend towards reducing intellectual property right protections abroad could have a detrimental impact on U.S. exports. Section 337 of the Tariff Act of 1930 requires U.S. intellectual property owners to prove "substantial" economic injury from infringing imports before relief is granted. We support the elimination of this injury requirement in S. 490. The requirement that petitioners need only prove infringement would make section 337 a more effective remedy for U.S. manufactures.

B. OCITA Position

OCITA believes that the U.S. negotiating delegation in the Uruguay Round should insure that property rights protection will be an integral part of these negotiations. Furthermore, trade arrangements should take into account the effectiveness of protecting U.S. intellectual property rights all given countries. OCITA has developed the following objectives which we believe will improve the protection of intellectual property rights.

C. Objectives for Improving of the Protection of Intellectual Property Rights

- A minimum standard patent term which takes into account regulatory review delays and other testing and review requirements which must be met before new products may be manufactured or sold commercially. The 20-year term provided in the European Patent Convention would be an appropriate minimum standard for all countries.

- Allowance of patents of sufficient scope to protect the invention. In particular, full patent coverage for new substances, i.e., chemicals, pharmaceuticals and products of biotechnology, in addition to the limited process of product-by-product patent coverage now allowed in some foreign countries.

- Exemption from requirements to "work" patents in countries where local needs can be met by importation and where local manufacture is not economical.

- Freedom from unreasonble tariff barriers against imports of locally patented products in cases where the patent owner elects to meet local market requirements from foreign production facilities.

- Protection of the exclusive patent right from compulsory licensing, except in cases of actual patent abuse, from the granting of exclusive licenses to parties other than the patent holder, and from other unfair practices that amount to expropriation.

- Prompt and adequate compensation where compulsory licensing is required, and in cases where patents are expropriated.

- Elimination of unfair "me-too" registration - a period of exclusive use, e.g., 15 years, should be provided for testing information developed to satisfy governmental pre-marketing requirements for such products as agrichemicals and pharmaceuticals.

- Protection for intellectual property which is transferred into a country though joint ventures or technology licensing agreements.

- Reversal of the burden of proof in cases of infringement of process and product-by process patents.

- Minimum standards of trademark and copyright protection.

- Reasonable fees for the application for, and maintenance of, patents, trademarks and copyrights.

- Protection against onerous bureaucratic delays in the application, granting and maintenace of patents, trademarks and copyrights.

- Availability of injunctive relief against infringers of patents, trademarks and copyrights.

- A commercial counterfeiting code, including means for effective enforcement.

- Expeditious and effective dispute settlement procedures that draw on the technical expertise of the World Intellectual Property Organization (WIPO) and the trade expertise of GATT.

- Right of owners of processes patented in the United States to bring suit for patent infringement against a party who imports a product that is manufactured abroad by using the patented process.

III. INDUSTRIAL TARGETING

A. Background

For the past several years, the question of whether industrial targeting on the part of foreign governments significantly distorts international trade patterns and, if so, how targeting practices should be made actionable under U.S. trade laws has been the subject of considerable debate. In Section 625 of the Omnibus Trade Act of 1984, the Comptroller General and several Executive Branch agencies - Commerce, Labor, and the USTR - were mandated to undertake studies of foreign industrial targeting to determine the scope of targeting problems and to assess whether existing U.S. laws adequately address them. In addition, the U.S. International Trade Commission (USITC) has prepared extensive analyses of targeting practices in several countries. Most of these studies were completed in June of 1985.

As defined by the USITC:

> Industrial targeting means coordinated government actions taken to direct productive resources to help domestic producers in selected industries become more competitive.

In essence targeting encompasses government intervention in international trade patterns in a manner that causes market distortions and creates a competitive advantage in export markets. Much of the discussion about how to address targeting has focused on the extent to which current trade laws cover the practices in question. In this regard the study prepared by USTR and Commerce suggests six areas where current laws may be inadequate with respect to targeting:

- They do not address GATT-consistent home market protection.
- They do not offset the economic effect of targeting when they are separated from the government practices by time.
- They do not counter "multiplier effects" that arise because commerical banks and others might give a targeted industry preferential terms.
- They do not fully offset the effect of targeting in third world country export markets.
- They do not counter the entire benefit associated with unfair R&D assistance.
- They do not address cooperation among private firms which enhances competitiveness

It is frequently claimed that targeting is difficult to define or that an internationally accepted definition of the problem is lacking. With the attention and analysis focused on targeting in recent years, the definition cited above suggests that trade distorting practices on the part of governments are recognized to include the following in combination: home market protection; special tax benefits; anti-trust exemptions or condoned anti-competitive behavior; scientific and technological assistance; financial assistance; foreign investment controls and government ownership. Some or all of these practices can lead to a "government created" comparative advantage for the targeted industry in question.

As to internationally agreed definitions, it is true that GATT has not yet explicitly recognized targeting as an unfair trade practice. U.S. leadership in demonstrating unwillingness to tolerate the effects of targeting, however, would help focus consideration on this problem during the upcoming Uruguay Round.

It should be noted that there is legitimate cause for concern that new laws and rules aimed at unfair targeting might be misapplied to certain developing country policies such as five year development plans. Criteria would need to be developed whereby distinctions could be drawn between valid government efforts to marshall resources toward achieving economic growth and development, and those policies and practices that lead to unfair competition.

Most formulations of targeting language call for explicit recognition of targeting under Section 301. In addition to defining targeting as an unfair trade practice that would be actionable under Section 301, proposed language would make retaliation mandatory in the event of a positive determination and a finding of injury. The injury test would not apply to other Section 301 cases. The intent is to balance the requirement for a mandatory response against the need for injury to be demonstrated thus avoiding "frivolous" petitions.

As a matter of general practice, the intent of Section 301 of the trade statutes has been recognized as being that of gaining access to foreign markets, while Section 201 is intended to provide relief from injurious imports into the United States. Thus, it is argued by some that targeting should properly be addressed under Section 201 or a combination of Sections 201 and 301. The combined approach would be very costly for petitioners to purse. Moreover, the effect of targeting can be felt both in domestic markets and in third world countries where U.S. exports may be displaced. With minor adjustments, Section 301 is viewed as offering the necessary flexibility to address multi-market impacts of targeting. Moreover, Section 201 applies to injurious imports from all sources, whereas targeting may involve only one specific country. Additionally, while Section 201 address injurious imports, these imports have come about through fair trade. Section 301 concerns itself with unfair trade practice. Thus, Section 301, is the more appropriate vehicle for providing relief from targeting practices of foreign governments "which burden or restrict" U.S. commerce.

B. OCITA Position

- o OCITA supports the inclusion of targeting language in comprehensive trade law reform legislation.
- o OCITA endorses the U.S. International Trade Commission's definition of targeting.
- o Section 301 of the Trade Act of 1974 should be amended to indentify targeting as an unfair trade practice. (As appropriate, special consideration should be given to the needs of developing countries.)
- o Assuming an affirmative finding of targeting which has caused injury, remedies should be mandatory, but should still provide for ultimate discretion on the part of the President.
- o Relief granted should be equivalent to the injury incurred.
- o The Administration should be urged to conduct meaningful discussions aimed at achieving the agreement on the stated in the GATT Ministial Declaration on targeting.

IV. IMPORTS THAT MAY THREATEN NATIONAL SECURITY

OCITA supports the strengthening of Section 232 of the Trade Expansion Act of 1962 and recommends the following changes to achieve this aim.

-- Private sector petitions to initiate a Section 232 investigation (or those self-initiated by the Government) must be reviewed by the Secretary of Commerce and within 90 days a decision must be made by the Secretary whether to proceed with the investigation or terminate it.

-- Provide for mandatory deadlines in which both the Secretary of Commerce and the President must act on investigations initiated by the Department of Commerce which make recommendations to the President. The recommendations of the Secretary of Commerce to the President must be made no later than six months after an investigation is initiated and the President must act upon the recommendation within 90 days and make public the reasons for the action taken.

V. ADMINISTRATIVE PROCEDURE FOR TEMPORARY SUSPENSION OF U.S. DUTY RATES

Over the last several years, a majority of miscellaneous duty suspension bills have been for chemical products.

However, many OCITA companies have been deterred from manufacturing certain chemicals because of the lengthy time-consuming and burdensome process of getting Congress to pass legislation suspending the duties on imported raw materials not manufactured in the United States.

There is a clear need to set up a more timely alternative procedure for obtaining non-controversial duty suspensions that operates with greater certainty and predictability, especially in light of the failure of the last Congress to pass any duty temporary suspension bills.

OCITA suggests that an administrative procedure be established to handle duty-suspension requests. This administrative procedure would parallel the current Congressional legislative procedure, not replace it. Additional details on this matter have been provided to the Committee as a separate written statement submitted by the Synthetic Organic Chemical Manufacturers Association.

IV. PRESHIPMENT INSPECTION COMPANIES

A. Background

OCITA is strongly opposed to the preshipment inspection and customs valuation programs currently being conducted in the United States by private companies on behalf of foreign governments. At present, at least 28 countries in the developing world have entered into contractes with foreign-owned private inspection companies, such as Societe Generale de Sureveillance, S.A. ("SGS"). These contracts provide that the private inspection companies will physically examine the quality and quantity of merchandise destined for those countries before shipment is made from the United States and will review the pricing and other financial aspects of those transactions for customs valuation purposes.

The alleged purpose of these preshipment inspection and valuation arrangements is to protect unsophisticated buyers in developing countries to ensure that developing country imports are assigned the proper customs valuation and to prevent capital flight. The private inspection programs go far beyond what is reasonable to achieve these objectives even if one accepts the objecties as legitimate. The private inspection programs amount to serious non-tariff barriers to trade that are illegal under the rules of the international trading system and impose a heavy and unnecessary burden on U.S. commerce.

B. OCITA Position

The House Foreign Affairs Committee has proposed to amend H.R. 3 with language that would change very little about the way that preshipment companies operate. OCITA believes that if the Senate concurs with this proposal , it would continue to create severe burdens for U.S. exporters. OCITA will be happy to work with the committee to develop legislative language which adequately addresses the issue.

At a minimum, legislation should include the following provisions:

- Private company preshipment inspection and valuation should not be required for shipments worth less than $5,000, instead of $2,500, which is the de minimis amount in some countries' private inspection programs;

- When a difference exists between the invoiced price and the private inspection company's "acceptable" price, a "Clean Report of Findings" should nonetheless be issued if the differential between the real and arbitrary prices is less than 10 percent; and

- The quotation of a price should be finalized when an import license is issued (and not be subject to further change at the whim of the inspection companies).

We believe that such legislation should also provide for the additional actions:

- Aggressive enforcement of United States rights under GATT, the GATT Customs Valuations Code, and other relevant international agreements with respect to countries that employ private preshipment inspection systems and are signatories to those agreements;
- Temporary suspension of GSP and CBI preferential tariff treatment of imports from a country that employs a private preshipment inspection company if there are continuing complaints and no corrective action by that country; and
- Implementation of sanctions against countries that employ a private preshipment inspection company pursuant to Section 301 of the Trade Act of 1974, should negotiations and other measures fail to solve the problem.

OCITA is please to have been able to submit its comments to the Committee. Questions on this statement should be addressed to K. James O'Connor, Jr. (202/887-1130) at the Chemical Manufacturers Association.

STATEMENT OF JOHN M. ANDREWS, PRESIDENT, AMERICAN NATURAL SODA ASH CORP., WESTPORT, CT

Mr. Andrews. Thank you, Mr. Chairman. I am John Andrews, president and chief executive officer of the American Natural Soda Ash Corp., otherwise known as ANSAC. Mr. Chairman, I am here to tell you today that fair trade and free trade does not exist for our company and many other companies in Japan. Presently, there is a strong proclivity in Washington to explain away our present bilateral trade imbalance with Japan to competitiveness and to a lack of commitment to serving the Japanese market.

Gentlemen, there is a lot more to the story than that.

Our industry's competitive edge in Japan is substantial. We can manufacture our product with half the manpower and half the energy that the Japanese industry can manufacture their product with. In spite of that, our position in Japan is not growing. We were very competitive when the yen was at 260. Now, the yen is at 140, and our market is again not growing. Commitment cannot be the problem for us.

We hold more inventory in Japan than the Japanese domestic industry does. We have successfully lowered the prices in an attempt to get more market share by 35 percent in the last 2 years. As Ambassador Mansfield recently said in a letter to Prime Minister Nakasone: "I wish other companies could make this same commitment that ANSAC has made to the Japanese market."

Japan has a long and well documented history of resisting imports in our area. In 1983, the Japan FTC in a courageous decision found that there was a cartel operating, restricting U.S. imports. Today, we see exactly the same actions taking place, but there is no activity by the JFTC to alleviate those activities.

We have had a great deal of support from this committee. In fact, this committee sent—with I think almost everyone's signature on it—a letter to Nakasone specific to soda ash last year. To date, we have no response. Ambassador Mansfield has himself in the past nine months written three letters to Nakasone asking for an inquiry on soda ash.

Senator Wallop, a member of this committee, has made two trips to Japan specific to our product to find out why we can't sell more product in Japan.

Gentlemen, we are not mad at the Japanese; we are mad at the U.S. Government for allowing this to continue.

The problem of Japanese structural barriers must be addressed, and it can only be done effectively through a policy response from the U.S. Government. The Japanese response to our problem and to many other problems is to do nothing, to meet and meet with our trade delegations, parading in a litany of polite, well-spoken Japanese officials who ask a lot of questions and promise to get back to us; but nothing happens. Gentlemen, it is a sham.

To illustrate how much of a sham it is, early this year a senior Japanese trade official at a reception we were holding in Tokyo confided in me that they had no intention of trying to help our industry improve our position, no matter what Trade Minister Tamuro said to Senator Wallop when he was there. In fact, it was their position that, since our industry was operating at 90-percent utilization and theirs was operating under 70, that we should not, no matter what our economics, be pushing for more market share. Does that sound like free trade to you?

He also said that the cartel existence, which was found by the JFTC in 1983, and which may be illegal in the United States, was just general Japanese business practice.

Gentlemen, from this I can only say that future negotiators must negotiate from strength, either strength from the Administration or strength from Congressional demand. We must realize that the system in Japan includes parts of MITI and other government agencies that are not a part of the solution but are a part of the problem. The intransigence of the Japanese government on our issue, in spite of all the fine support we have had from the Finance Committee, shows clearly Congress must enact legislation ensuring U.S. exporters access to foreign markets or demanding major reductions in U.S. access.

Our goal must be free trade, but we must convince our trading partners, specifically Japan, that free trade is not "we buy, they sell." Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Andrews. Our next witness is Mr. Robert McElwaine, who is president of the American International Automobile Dealers Association. Would you proceed?

[The prepared statement of Mr. Andrews follows:]

TESTIMONY OF
JOHN M. ANDREWS,
PRESIDENT
AMERICAN NATURAL SODA ASH CORPORATION (ANSAC)

Mr. Chairman, I am John Andrews, President of the American Natural Soda Ash Corporation ("ANSAC"). ANSAC is a Webb-Pomerene Corporation representing the six U.S. producers of soda ash, a commodity used in the manufacture of glass, detergents, and other industrial processes. My purpose in testifying today is to report to you on the market access problems which ANSAC is encountering in Japan.

ANSAC's only business is exports, and we are therefore completely dependent upon our ability to secure and maintain access to foreign markets. Because the U.S. enjoys a natural resource advantage in soda ash, we can produce higher quality soda ash, at a lower cost, than any other country in the world. In any open competitive situation, our industry is likely to prevail. Unfortunately, we do not confront an open market situation in Japan, and we appear to have exhausted the commercial possibilities for achieving real access to that market. We have concluded that without the support of our government, such access is unattainable.

The U.S. Competitive Edge

Analyses of the causes of the bilateral trade imbalance with Japan are complicated by the fact that Japanese firms have achieved a competitive edge over some U.S. industries, and U.S. firms have often failed to make a major commitment to serving the Japanese market. The case of soda ash is important because it is one industry in which the United States holds a commanding competitive edge over Japan, and where the U.S. industry has mounted a major and sustained effort to penetrate the Japanese market. The fact that we have encountered major barriers, and that the Japanese government has been unwilling or unable to rectify the problem, suggests that more fundamental problems underlie the trade imbalance than factors such as exchange rates or the efforts of U.S. companies.

Our competitive edge is substantial. The Japanese industry, lacking natural soda ash deposits comparable to our own, must manufacture the product through a synthetic process which is heavily dependent on imported raw materials and energy. The U.S. soda ash industry uses substantially less manpower and less energy to produce each ton of soda ash than the Japanese industry. Our cost advantage is so significant that even when the dollar was at its strongest relative to the yen, we could incur the costs associated with exporting the product to Japan (shipping, insurance, warehousing, etc.) and still remain price competitive in Japan. As the dollar has declined in value relative to the yen, our cost advantage has further widened.

We have made a major commitment to expanding our market presence in Japan. Since our large-scale entry into Japan in the early 1980s, we have repeatedly undercut the domestic price (which was far higher than the world price) and Japanese soda ash prices have declined by 35 percent. We continue to price below our Japanese competitors, and initiated major price reductions in 1986. In order to demonstrate our commitment to our Japanese customers, we have warehoused approximately two months' worth of soda ash inventory at seven locations in Japan, which is more inventory than the Japanese firms themselves maintain. We have not had a single complaint about the quality of our product from a Japanese customer in years. As Ambassador Mansfield recently said to Prime Minister Nakasone, in summarizing our activities in Japan, "I wish that more American exporters were making similar efforts actively to adapt to the needs of Japanese customers."

Japanese Market Barriers

Japan has a long history of resistance to import penetration in this industrial sector. In 1983, the Japan Fair Trade Commission (JFTC) found that an illegal cartel of Japanese soda ash producers, organized in 1973, was restricting sales of U.S. soda ash in Japan. The JFTC found that these firms regulated the price of soda ash in Japan, allocated market shares and import shares among themselves, and shared the profits and losses among themselves according to an agreed ratio. Directly and through their affiliated trading companies, the Japanese producers exerted pressure on Japanese consumers not to procure imported soda ash through "independent" channels, that is, from a source other than the producers' group itself. The JFTC ordered the Japanese producers to cease this activity, although it imposed no fines or other sanctions. In the immediate aftermath of the JFTC decision, U.S. sales increased from an annual total of 50 thousand metric tons to approximately 210-220 thousand tons -- about 15-18 percent of the market.

After this, however, U.S. import volume leveled off, and has stagnated thereafter at 15-18 percent of the market. A number of Japanese customers reported renewed pressure from Japanese soda ash producers, and cited that pressure as a reason why they could not increase their purchases of U.S. soda ash, regardless of the price offered. In 1986 ANSAC instituted substantial price discounts, but sales volume did not increase -- the net effect of these discounts was a $3 million loss in revenue on ANSAC's existing sales.

There are many indications that despite the 1983 decision by the JFTC, the Japanese producers continue to restrict U.S. import volume in Japan:

* In 1986 a Japanese soda ash producer contacted a Japanese company which was purchasing a large quantity of U.S. soda ash. The producer demanded that this company cease its purchases of U.S. soda ash, or it would sever all commercial dealings with the firm.

* A number of Japanese customers have reported that at the insistence of Japanese producers, they can purchase only a fixed volume of soda ash -- such as 20-30 percent -- from U.S. suppliers, and that this volume will not be increased regardless of the terms offered.

* In 1986 a Japanese trading company affiliated with the producers' group contacted ANSAC and asked how much more U.S. soda ash it would need to buy in order to make U.S. 1986 volume equal that of 1985. ANSAC was told that "we want you to come out equal to 1985, but we don't want to give you growth."

These and other similar reports, coupled with the history of this market, have made it clear to us that we do not face an open market situation in Japan.

U.S. Market-Opening Efforts

The U.S. Government has raised the soda ash market access issue repeatedly with the Japanese government through a variety of formal and informal channels during the past two years, but with few tangible results to date. USTR has held a series of bilateral discussions with MITI on the issue and has pressed the Japanese government to take steps to resolve the problem. Senator Wallop, a member of this Committee and a longstanding free trade advocate whose home state of Wyoming contains the largest natural soda ash deposits, has made two visits to Japan solely to raise this issue with the Japanese government. This year he met with Prime Minister Nakasone, several cabinet ministers and a number of Diet members on the issue. Many other Congressmen and Senators, have raised the soda ash issue with Administration Japanese officials since 1985.

MITI officials have frequently assured me that they are sympathetic with our problem, but that the Japanese market is open, and that in order to ensure our sales, all we need do is to be competitive in price, quality, and service. In February, MITI hosted a series of meetings in Tokyo between ANSAC and Japanese soda ash users, which MITI indicated was designed to produce greater understanding between ANSAC and our Japanese customers. A number of MITI officials were very helpful in arranging these meetings, and the MITI Minister himself expressed sympathy for our problems. We appreciated the spirit in which they were held.

It came as an unpleasant surprise, therefore, when at a reception during these meetings, a high-level MITI official who enjoys tremendous influence and respect in Japan spoke bluntly to me and to other U.S. soda ash executives. He said that U.S. soda ash sales in Japan were "at a limit" and that no further increases would occur regardless of the economics (price, quality and so on). The reason he gave for this was that the Japanese industry was operating at a lower operating ratio (68 percent) than the U.S. industry (90 percent). This official told us that he had no intention of doing anything to help us improve our market access in Japan.

I pointed out that the cartel activities of the Japanese soda ash producers had been found by the JFTC to be illegal in 1983. He said that such practices were only "normal Japan practices" and while illegal in the U.S., they were common in Japan.

It became apparent to me after this exchange that MITI, rather than being part of the solution, may be part of the problem. While most Japanese officials tell us what we want to hear, this official, at least, had the candor to tell us the way things really are in Japan today. The more common Japanese Government response to our problem has been to do nothing, to meet with our trade delegations, politely asking questions and promising to get back to us. In light of our experience, such behavior appears to be a tactic of delay and do-nothing.

U.S. Policy Responses

The experience of the soda ash industry indicates that commercial initiatives and economic factors such as changes in the exchange rate will not, by themselves, rectify the U.S.-Japan trade imbalance. The problem of Japanese structural barriers needs to be addressed, and this can only be done effectively through a policy response by the U.S. government.

U.S. negotiators have pressed the Japanese government to take the steps necessary to ensure real access for U.S. soda ash in Japan. Congressional support for this effort has been strong, and must continue if a positive Japanese response is to be obtained. The fact that such a response has not been achieved to date should be the occasion for a redoubled effort by the Administration and Congress.

Congress may also consider legislative options. The barriers which we confront in Japan is, in effect, the restrictive practices of a group of private companies that are blocking the expansion of U.S. export sales. The Japanese government is tolerating this conduct, but we are unaware of any current direct government role in encouraging or directing it. Section 301 of the Trade Act of 1974, the principal U.S. trade remedy applicable to market barriers abroad, is directed against the actions of foreign governments. While we believe that toleration of cartels is in fact an "unreasonable" practice currently actionable under Section 301, we support the current language in H.R. 3 which would amend Section 301 in order to make this explicit.

In addition, I note that the Senate trade bill contains provisions for a strong U.S. response to nations which maintain a consistent pattern of barriers and market distorting practices. The implementation of such action by the U.S. may disrupt many commercial relationships and adversely affect U.S. as well as Japanese business interests. I hope that this problem, and others like it, can be resolved without resort to such measures. However, our industry's disappointing results in Japan, and the apparent intransigence of the Japanese government on this issue, show clearly that a mandate from the U.S. Congress is required.

Conclusion

At present, reflecting the massive U.S. trade deficit, a public policy debate is under way concerning the international competitiveness of U.S. industry. Some argue that the solution to the trade problem lies principally in the exchange rate, and that the weakening of the dollar will ultimately eliminate the trade imbalance. Others feel that the answer to the problem can be found if U.S. companies become more competitive -- cutting costs and increasing their overseas sales efforts. The case of soda ash, however, shows that there is more to the problem than this -- we already have the most competitive soda ash industry in the world, and we enjoyed a cost advantage even when the dollar was strong. However, these factors have proven virtually irrelevant to our ability to increase our sales in Japan.

In effect, we face limits on what we, as a private industry, can accomplish internationally no matter how competitive we may be. A strong, effective policy response by the U.S. Government is essential if the trade distortions in this sector are ever to be rectified. I hope that your Subcommittee remains mindful of our case as you consider trade legislation this year.

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION, WASHINGTON, DC

Mr. McELWAINE. Mr. Chairman, I greatly appreciate your granting us this opportunity to express the concerns of the nation's 9,000 imported automobile dealers and their 250,000 employees regarding the trade legislation that you are considering here. More importantly, I think we represent the interests in many ways of the numerous import-dependent American small businesses who see the prospect of ruin in some of the proposals that have been made to this committee and to other committees concerned with trade.

In the interest of time, I am going to concentrate on only two issues: the proposals for dealing with relief from injury due to fairly traded goods, and the concept that our trade deficit with certain countries should be corrected by mandating a 10 percent per year reduction in that deficit.

Let me first apply myself to this proposition contained in S. 499, as introduced by Senator Riegle and known in the House as the Gephardt Amendment. AIADA urges the Finance Committee not include this virulently protectionist measure in its trade bill. Aside from the fact that it would be economically ruinous, it violates all of our international commitments under the GATT. It invites retaliation against U.S. exports, principally farm exports, while seeking to use barriers to trade as a simple remedy to problems that in many cases have nothing to do with unfair trade practices.

The present language of the bill, which gives complete discretion in the application of quantitative restraints, could very easily pose a threat of instant destruction to many import-dependent American businesses, with a heavy loss of jobs, investment, and economic activity.

We are currently sponsoring a study on this subject, which is being carried out by a distinguished economist, which takes the Gephardt amendment, applies it to 1984 statistics. If the Gephardt amendment had been law during 1984, what would have happened to our economy? Well, the average consumer for an imported automobile would have paid $2,400 more for the car than he did. We would have seen 1,000 small businesses close in the United States at a loss of about 30,000 dealership jobs.

We would have lost 2,500 jobs in ports handling these imports. There is a whole lot more to it which we will have to submit to this committee in our final written testimony.

Import-dependent American industries should not have to exist under such a threat, particularly when they are dealing in fairly traded goods, such as automobiles and trucks.

In fairness and equity, if such destructive legislation should be enacted, we think it vital that the language of the measure include a guarantee that the application of the prescribed remedies should be across the board and even-handed and not single out any particular industry or any particular product.

In terms of 201, we strongly commend this committee for its work in dealing with legislation covering relief from fairly traded imports. Proposals such as Title II of S. 490, by and large, are far more likely to help U.S. industries adjust to import competition than would H.R. 3 or even the administration's concept.

From its inception, the escape clause was intended to provide temporary relief from competition from fairly traded imports. Now, Congress should not make section 201 a safe harbor from the cold winds of foreign competition. Section 201 should be limited to its proper role as a temporary mechanism of adjustment to help industries to compete in the world marketplace. We further commend the committee for the positive steps it has taken towards encouraging long-term adjustment rather than offering permanent protection through article 201. Making relief regressive should increase the incentive of industries to become competitive or to move on to other pursuits.

Unfortunately, S. 490 makes a mockery of the purpose of providing temporary relief by extending the available period for relief for an additional 5 years, which makes the concept more that of an old-age pension than one of temporary assistance. The present limits are more than adequate.

AIADA urges the committee to retain the principle that the extraordinary relief available under article 201 should be available only to those industries that can demonstrate that imports are their most serious cause of injury. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. McElwaine.

Our next witness is Mr. Matthew Coffey, who is President of the National Tooling and Machining Association. If you would proceed, sir?

[The prepared statement and a letter from Mr. McElwaine follow:]

STATEMENT
OF
ROBERT M. McELWAINE
PRESIDENT
AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION
ON
COMPREHENSIVE TRADE LEGISLATION

Mr. Chairman and Members of the Committee,

I am Robert M. McElwaine, President of the American International Automobile Dealers Association (AIADA), which represents the interests of over 9,000 American automobile dealers and their approximately 250,000 employees. I am accompanied by our counsel, Bart S. Fisher, Esq., of the Washington, D.C. law firm of Patton, Boggs & Blow. We are pleased to have this opportunity to share with the Committee our views on S. 490 and H.R. 3, and in particular proposed revisions to section 201 of the Trade Act of 1974 and adoption of the Gephardt amendment.

A. SECTION 201

Last year, we urged the Congress "to stand firm in the face of protectionist calls to revamp section 201 to make its extraordinary relief more widely available." We commend the Committee for its efforts.

On balance, we believe proposals like title II of S. 490 are more likely than the provisions agreed to by the Ways and Means Committee to help U.S. industries to adjust to import competition. We thus recommend that the Committee retain those portions of the Senate bill that will encourage long-term adjustment, rather than provide permanent protection.

We hope the Committee this year can produce a bill that makes positive revisions to section 201. During mark-up, the Committee should keep three guiding principles in mind. First, the emphasis under the statute should be on positive industry adjustment, not import protection. Second, the extraordinary relief available should be provided only to those industries that can demonstrate that imports are their most serious cause of injury. Finally, the President should retain broad authority to determine whether relief proposed by the International Trade Commission is in the national interest. If section 201 embodies these essential elements, it will serve its intended function of providing temporary relief from imports that are traded in compliance with international agreements, while ensuring that the nation's overall effort to become more competitive internationally can be realized.

As this Committee knows, section 201 deals with fairly traded goods. When unfair foreign trading practices are involved, there should be a bias towards protection. When a U.S. industry simply can not compete, however, it should make the requisite adjustments. Congress should not make section 201 a safe harbor from the cold winds of foreign competition. Section 201 should be limited to its proper role as a temporary mechanism of adjustment to help industries eventually compete in the world marketplace.

Long-Term Industry Adjustment

At its inception, the "escape clause" was intended to provide temporary relief from import competition. Unfortunately, for several industries it has become a means of avoiding the need to adjust to changing patterns of trade and competition. In our view, S. 490 properly emphasizes long-term adjustment, not permanent protection.

Of particular significance, it strengthens the existing implied requirement under section 201 that any action recommended by the ITC after a finding of serious injury be able to remedy the problem permanently. If the Commission finds "no reasonable expectation that the domestic industry can successfully compete" with foreign producers after termination of any relief provided under the Act, the bill would direct the Commission to recommend actions "necessary to provide for the orderly transfer of the resources of the domestic industry to other productive pursuits" (§ 204(b)(1)(A)(ii)). The Administration bill further supports structural adjustment by providing the ITC with discretion to limit its recommendations for relief to segments of an industry, where applicable, that could retain their competitive advantages if provided with temporary relief. The Administration bill thus forces the Commission to address the possibility of providing less than industry-wide relief. This language should be added to S. 490 during mark-up.

Additionally, the Senate bill sets forth several bases upon which relief measures may be reduced or terminated, including the achievement of their intended objectives, their threat to national security, or non-compliance by industry with its adjustment plan (§ 206(c)(4)). Making relief degressive should increase the incentive of industries to become competitive or to move on to other pursuits. The bill also provides that once import relief has expired, the industry would not be eligible for import relief for another 10 years. Unfortunately, S. 490 makes a mockery of the purpose of providing "temporary" relief by adding an additional 5 years of assistance. However, by establishing standards for terminating relief and including the 10-year hiatus provision, the bill strengthens current law.

As difficult as it may be for some industries to recognize or admit, the orderly transfer of resources to other productive pursuits will eventually serve the national interest. We hope the Committee will resist efforts to delete those provisions that change the focus of the escape clause from permanent import protection to positive long-term adjustment. Moreover, we hope you will retain those provisions that make explicit that some industries may never be able to compete and should begin making the transition to other, more productive, pursuits.

As part of the effort to encourage adjustment, the Congress should provide additional adjustment assistance to those workers, industries, and communities hurt by imports. We have long supported providing relief. Our members will prosper in this country only if our customers have jobs and disposable incomes. We think all workers should be given an opportunity to enjoy gainful employment again. Only government, however, can provide the financial support necessary to make programs work. Moreover, only the government can ensure that workers, industries, and communities do their share to commit to adjustment as a condition of receiving federal financial assistance. We thus encourage the Committee to adopt measures that will help those hurt by the expansion of world trade.

The funding of adjustment assistance should preferably be out of the general revenues of the Treasury. We would, however, be willing to support a small uniform "user fee" on all imports of up to 1 percent ad valorem to fund adjustment assistance if this measure is adopted subject to appropriate procedures under the General Agreement on Tariffs and Trade (GATT).

The key to a successful U.S. trade policy is to promote adjustment to a changing world economy. Establishing barriers to trade will reduce the overall national income; promoting adjustment will expand the U.S. production possibilities curve and promote the most dynamic sectors of the U.S. economy.

Substantial Injury Test

Under the Senate bill (and the House bill as well), the purpose of the Commission's investigation would still be to determine whether an article "is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article" (§ 204(a)) (emphasis added). Additionally, both bills maintain the definition of "substantial cause," which under present law is "a cause which is important and not less than any other cause" (§ 201(b)(4)). By retaining the substantial cause test and the current statutory definition, the Committee will ensure that the extraordinary relief available under section 201 will only be provided to those industries that demonstrate that imports are not an insubstantial cause of injury.

As we indicated last year, we think it would be highly inappropriate to lower this standard, in particular to provide relief when a national or international economic recession is the cause of the injury suffered. We thus argued against bills that would have dropped "substantial" from the standard. Under those proposals, an industry could obtain relief if imports were only a cause of serious injury. We understand this was proposed in part to deal with a recession as a cause of injury. While designed to avoid this problem, it would undermine the whole purpose of the escape clause. In short, relief could be given, with adverse effects on consumers and the nation as a whole, without addressing the more serious problems of the industry.

Having been principally involved in the 1980 automobile case, we are particularly concerned about a lowering of the causation standard by allowing the ITC to disaggregate the factors causing a recession, as the Administration proposed and the Ways and Means Committee adopted. In our view, the ITC's decision in that landmark decision was eminently correct. The Commission had before it two unassailable facts: the U.S. automobile industry was facing severe economic difficulties and Japanese automobile imports had increased significantly. The key issue was whether Detroit's distress was due to imports or to other factors. After 46 hours of public testimony from 27 different groups over a week-long period, the Commission determined that imports were not a "substantial cause" of injury. Rather, economic conditions generally and a shift in consumer demand to more fuel-efficient automobiles were found to be more important in causing the slump Detroit was facing. We do not believe the standard should be changed simply so that cases like this will be easier to win.

As suggested above, we find particularly objectionable the Administration's suggested revision to section 201 proposing that the causes of declining demand associated with an economic recession may not be treated as a single cause for purposes of determining whether imports are a substantial cause of injury to the domestic industry. It may be, as the Administration asserts, that "during a period of recession . . . an industry is most vulnerable to a surge in import competition." However, rather than ensuring that import relief will be "no more difficult to obtain in a recession," the Administration virtually ensures that any industry bringing a case during or following a recession will win it. As demonstrated by the 1980 automobile case, present law is adequate. The Commission has all the statutory authority it needs to make the type of assessment that the Administration would essentially force upon it.

Presidential Discretion

We are particularly concerned about the provisions in S. 490 that would curtail Presidential discretion in providing relief under section 201. Under S. 490, if the Commission finds injury by a unanimous vote, the President must either adopt the ITC's recommendations for relief (or actions "substantially equivalent") or submit an alternative to the Congress for its consideration. If the Commission's vote is not unanimous, the President must take action either to help the industry to compete successfully or to transfer its resources to "other productive pursuits" (§ 205(b)(1)). The President would not be required to take action against U.S. national security interests or that would cause serious injury to a domestic industry.

The Senate provisions are preferable to the House bill, which transfers authority from the President to the USTR. But the Senate provisions still are objectionable and damaging to the extent the President's discretion is severely limited. Even when the Commission makes a unanimous injury determination in its role as factfinder, the President in his role as policymaker should have the discretion to avoid providing relief that could harm the nation as a whole.

If the Committee believes that some revisions must be made, we recommend that the limitations proposed with respect to majority determinations also apply when the injury determination is unanimous. Moreover, even when the injury determination is unanimous, the President also should have the authority to reject the recommended relief when the costs of the restrictions on consumers would substantially outweigh the benefits to the domestic industry.

Efforts to shortcut the steps for relief under section 201 would seriously erode our international obligations and turn the "escape clause" rationale on its head: instead of limiting restrictions on fairly traded imports to special cases of economic adjustment necessitated by imports, section 201 would become a blunt instrument of protectionism. Given the extraordinary consequences that flow from a positive determination, it is proper that a careful investigation be made of the health of the industry and the real effect of increased imports on that industry. We hope the Committee will resist efforts to alter or eviscerate Section 201 in producing positive trade legislation this year that promotes the national interest.

B. THE GEPHARDT AMENDMENT

We oppose enactment of S. 499, the "Trade Deficit Reduction and Market Access Act of 1987," introduced by Senator Riegle on February 5, 1987. As you know, this is the Senate version of the so-called "Gephardt amendment," which would require an annual 10 percent reduction in our bilateral trade deficit with countries maintaining an "excessive and unwarranted" trade surplus with the United States. AIADA believes the Finance Committee, like the House Ways and Means Committee, should keep this virulently protectionist legislation out of its omnibus trade bill. It violates the GATT, invites retaliation against U.S. exports (principally agricultural exports), and sets arbitrary and unrealistic time limits for negotiations. Moreover, it mechanistically seeks to remedy problems not necessarily resulting from unfair trade practices or foreign barriers to trade. The Committee should resist efforts to add this legislation to S. 490 during mark-up or on the floor.

First, the Riegle bill violates the GATT because it provides for the arbitrary imposition of quotas or increases in duties if the President is unable to negotiate reductions in our bilateral trade deficit with the countries falling within the ambit of the bill's provisions. As a general rule, under Article XI of the GATT, the United States may not arbitrarily impose quantitative restrictions on imports. Similarly, under Article II the United States may not unilaterally increase tariff rates "bound" during multilateral trade negotiations unless it is prepared to compensate the countries whose rights have been nullified or impaired as a result of the increase. Finally, the provision cannot be justified as an "escape clause" remedy under Article XIX limited to particular products or a measure under Article XII necessary to reduce the U.S. balance of payments deficit. Enactment of the provision would be particularly inappropriate given the commitment made by the United States at the launching of the Uruguay Round to a "standstill" in the imposition of further barriers to trade. Indeed, we committed to a "rollback" of existing barriers. The new round of trade talks is too important for the United States to jeopardize through enactment of GATT-illegal provisions like the Riegle bill.

Second, the measure would invite retaliation by our trade partners. Agricultural exports, which are already perilous, would be further put at risk if this measure became law. The countries that are the targets of the legislation are among the largest purchasers of U.S. agricultural exports.

Not only U.S. exporters, but consumers as well would be hurt through enactment of this provision. As the New York Times observed last year, "[m]any industries abroad would be delighted to have an excuse to get their governments to set quotas that limit exports to America--and then to raise prices. That's just what has happened with the quotas on Japanese cars. The big losers are American consumers." More recently, the Washington Post noted in a February 19, 1987 editorial that "[t]he Gephardt provision may be good politics . . . [b]ut it is irrational and dangerous as national policy for a country whose economy depends on world trade".

Had this bill been in effect in 1984, we estimate that the average price of a Japanese passenger car would have increased by between $1,100 and $2,200 over the price that actually existed in 1984. That is in the first year alone. It gets worse as the bill further cuts back imports in succeeding years. Additionally, the total welfare loss to consumers of Japanese automobiles would have been between $1.9 and $3.9 billion in 1984 alone. Finally, over 2,600 Americans would have lost jobs in our ports in that year--nearly 13 percent of all port jobs associated with the importation of vehicles (including trucks).

Finally, S. 499 establishes wholly unrealistic time periods for negotiating with foreign countries to reduce their trade imbalances. By giving the USTR two months (even if extended by an additional two months) to negotiate with foreign governments, the bill ensures that its automatic retaliatory provisions will be triggered. The Committee cannot realistically expect two months of negotiations to produce solutions to problems that have taken years to develop.

In its mechanistic approach, the bill seeks to remedy problems not necessarily caused by unfair foreign trade practices or barriers to trade. Our huge foreign trade deficit is not a symptom of weak or ineffective trade laws. It is the product of the federal budget deficit, a strong dollar, faster economic growth in the United States than abroad, the enormous LDC debt, and foreign trade restrictions. Unfortunately, the Riegle bill ignores the more fundamental causes of our trade deficit with certain countries. As a result, it could well require U.S. trading partners to reduce their bilateral trade deficits by an amount greater than the total estimated impact of their trade barriers.

The bill is aimed principally at the exports of Japan. Unfortunately, the legislation does not limit the President's discretion in achieving the 10 percent annual reduction in the surplus. As a result, the President could single out particular products, such as cars and trucks, to bear the brunt of the restrictions on imports. Import-dependent U.S. industries should not be unfairly penalized, particularly to the extent that they import fairly traded goods like vehicles.

Conclusion

We hope that in developing positive, bipartisan trade legislation, the Committee will reaffirm the nation's commitment to free and fair trade and those policies that have helped the United States to prosper since World War II. The Congress must avoid the temptation to pass sector-specific or country-specific legislation designed to shield domestic industries from legitimate foreign competition. We recognize that increased competition will force structural adjustments in our economy. In developing measures to help workers, industries, and communities to adjust to import competition, the Congress should provide assistance that emphasizes adjustment. We look forward to working with the Committee to develop language to help industries under section 201 to adjust to import competition. We also encourage the Committee to resist efforts to add protectionist provisions like S. 499 to the omnibus trade bill.

Thank you.

AIADA

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International
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Robert M. McElwaine
President

April 29, 1987

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate
Washington, D.C.

Dear Chairman Bentsen,

I would like to clarify, for the record, one point raised during my discussion with Senator Riegle. He asked for an explanation of the higher prices for Japanese cars in Tokyo than in the United States. I replied that a very large part of the difference was due to the Japanese "value added tax," which is not, of course, charged on cars sold in the United States.

At the close of the hearing, you remarked that the Japanese "do not have a value added tax," and there was no remaining opportunity for me to comment on that.

The Japanese do, indeed, have a tax on automobiles and other commodities, that is the equivalent of the European-style value added tax. The difference is largely a matter of semantics. The Japanese refer to their tax as a "commodity tax" and it does not apply across the boards, but only to a limited number of products, automobiles being one of them.

As the accompanying analysis shows, the Japanese commodity tax amounts to 23 percent of the ex-factory price of large-sized passenger cars (more than two-liter engine capacity), 18.5 percent on medium-sized passenger cars, and 15.5 percent on small (very small by U.S. standards) cars. In addition, the Japanese have a five percent sales tax (acquisition tax).

As you can see, the result is a 28 percent tax added to the price of an average-sized Japanese car in Japan. This can add several thousand dollars to the price. While not designated as such, this commodity tax acts as a "value added tax" in every sense of the term. I hope this explanation can be added to the record of the hearing.

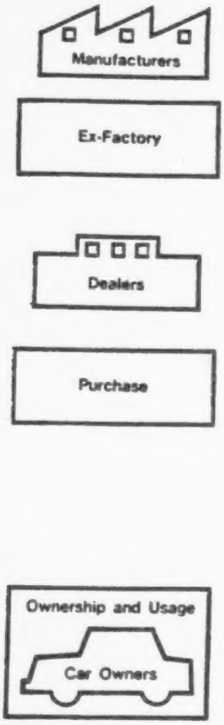
Sincerely,

Robt McElwaine

Domestic Taxes on Automobiles

JAPANESE automobile-related taxes include commodity, acquisition, tonnage and automobile taxes imposed on the purchase or ownership of automobiles, gasoline and diesel oil delivery and petroleum gas taxes depending upon the type of fuel used in the motor vehicles.

Automobile-Related Taxes (Passenger Cars for Private Use)



Type of Tax	Basis of Tax Assessment	Tax Rate
Commodity Tax	Assessed value is ex-factory price for Japanese makes and CIF price for imports	
	• Engine capacity, over 2000 cc	23.0%
	• Engine capacity, 551 to 2000 cc	18.5%
	• Engine capacity, less than 550 cc	15.5%
Acquisition Tax	Actual purchase price	
	• Private-use vehicles	5 %
	• Business-use & midgets	3 %
Tonnage Tax	Taxed at regular inspection, per every 0.5t of curb weight	6,300 yen/year
	Midgets (set tax)	4,400 yen/year
Automobile Tax	By engine capacity	
	• 551 to 1000 cc	29,500 yen/year
	• 1001 to 1500 cc	34,500 yen/year
	• 1501 to 2000 cc	39,500 yen/year
	• 2001 to 3000 cc	81,500 yen/year
	• 3001 to 6000 cc	88,500 yen/year
	• 6001 cc or more	148,500 yen/year
Midget Tax	Midget passenger cars (less than 550 cc)	7,200 yen/year
Gasoline Tax	Assessed on ex-factory price; taxes included in retail price	53.8 yen/liter
Diesel Oil Delivery Tax		24.3 yen/liter
Petroleum Gas Tax		17.5 yen/kg

Notes [illegible]
2. [illegible] system for passenger cars only
Source [illegible]

STATEMENT OF MATTHEW B. COFFEY, PRESIDENT, NATIONAL TOOLING AND MACHINING ASSOCIATION, ON BEHALF OF THE METALWORKING TRADE COALITION, FORT WASHINGTON, MD

Mr. Coffey. Thank you, Mr. Chairman. You have my prepared statement for the record. I would just like to refer to a few of the points in that statement.

I am here today speaking for the Metalworking Trade Coalition, which is a coalition of 35 national associations representing small metalworking businesses, approximately 30,000 of those businesses in 40 States. We employ almost two million people.

Two premises really undergird the testimony, and that is that there is unfair trade in the world; and second, small business has limited, if any, remedies. Small manufacturing businesses have limited or any remedies. So, we are urging you to consider eight points as you proceed on this legislation.

The first is limitations on diversionary dumping, making it an actionable unfair trade practice, with downstream product monitoring to prevent evasion of U.S. dumping and subsidy laws. We appreciate your establishing clearer statutory guidelines on upstream subsidy investigation, expanding the coverage to customs unions, such as the European Economic Community.

We would hope that you would look at a revision of the 1916 Revenue Act for a viable private right of action so that damages get paid to injured companies rather than to the Government. This is extremely important to small companies who presently have no practical remedy. The cost of bringing the case before the International Trade Commission can easily amount to hundreds of thousands of dollars, more than the liquidated value of most small companies.

Even if a small company can somehow find the resources to bring a proceeding before the ITC, the victory is for the Government because they get the benefit through higher duty payments to the Treasury. So, it is a terrible problem for small manufacturers.

We suggest that you give the Commerce Department more extensive authority not only to assist in bringing unfair trade cases but to initiate cases in fact finding on behalf of small businesses; and we hope that you will insist on consideration of small business factors such as unavailability of data, the size of companies and their ability to survive by the ITC. Right now, the small company bears the full burden of proof.

We would hope that there could be a cost-sharing arrangement by the Government in filing and prosecuting cases by small business in need of assistance. And we would hope you would clarify that the Government is not exempt from imposition of penalty duties on dumped or subsidized products imported by it for its use, and that such duties be taken into account in awarding procurement contracts. And we would hope that a time limit can be created in section 232 cases involving national security determinations.

Those are the eight points that I want to cover briefly, Mr. Chairman, and I would be happy to respond to questions.

The Chairman. You have covered them succinctly and well. And as the "clean-up hitter," we have my old friend, Jack Valenti, the President and Chief Executive Officer of the Motion Picture Association.

[The prepared statement of Mr. Coffey follows:]

TESTIMONY OF THE
METALWORKING TRADE COALITION

Mr. Chairman and Members of the Committee, my name is Matthew B. Coffey. I am a member of the Executive Committee of the Metalworking Trade Coalition (MTC) on whose behalf this testimony is offered. I am also President of the National Tooling and Machining Association which, of course, is part of the Coalition.

We very much appreciate this opportunity to offer our comments on the need for comprehensive trade legislation in 1987 inasmuch as we have advocated trade law reforms since MTC's formation in 1981.

The Metalworking Trade Coalition is composed of 35 national trade associations representing 29,859 small metalworking plants in 40 states which employ 1.9 million persons and produce $96 billion in annual sales.

MTC is truly an organization of small businesses. There are 49 workers today in the average metalworking plant where products and components for virtually all industrial and consumer goods are made. Our member companies are essentially a manufacturer's manufacturer and have thus felt the downstream economic impact of the loss of domestic markets of their manufacturer customer.

For this reason, we applaud the early introduction of S.490 and this Committee's immediate consideration of comprehensive trade legislation. While we emphasize the need for comprehensive reform, in the interest of time we will limit our testimony to issues of particular concern to the metalworking community.

It gives us great hope that each of these issues is addressed in either S.490 or H.R.3. They include diversionary dumping, upstream subsidies, downstream product monitoring, private remedy for injury resulting from dumping and imports affecting national security.

Diversionary Dumping and Downstream Product Monitoring

Diversion is the evasion of U.S. dumping and subsidy laws. It occurs when products that are subsidized or sold at dumped prices are further processed or are used as components in "downstream" products. It is also used to evade restrictions in voluntary restraint arrangements, like those presently in effect on steel.

If the component production is subsidized, the practice is called "upstream subsidization." If the component is being sold at a dumped price, the practice is called "diversionary dumping."

Over the last five years, literally hundreds of antidumping and countervailing duty actions were brought against a broad variety of imports. A good share of these actions were successful and resulted in the imposition of additional duties on imports, especially in the steel sector. Since the President's steel program went into effect in late 1984, most of the principal foreign steel suppliers have agreed to restrain their exports of a broad variety of products. While those agreements superseded countervailing duty or antidumping orders previously in effect on covered products, a number of other orders remain operative. The net result is that a great deal of steel imported into this country is subject to quantitative limitations or penalty duties imposed to offset unfair trade practices.

Faced with this situation, foreign producers have every economic incentive to "move downstream." That is, they are actively seeking to avoid restraints on their products by transforming them into other products that may be beyond the coverage of existing quotas or orders.

Virtually every observer has agreed that diversion is a serious threat to our trade laws and our industries. Both houses of Congress sought to deal with the problem in 1984. Both the trade bill passed by the House last year and the substitute offered by the Republican leadership contained antidiversion measures. The Administration trade bill introduced last week as H.R. 1155 seeks to "tighten antidumping and countervailing duty laws through new anti-circumvention provisions to prevent evasion of duties."

Several examples of diversion illustrate the problem:

1. In 1982, American steel producers brought countervailing duty actions against a broad number of steel products exported by the European Community. Among those products was cold finished steel bar, which is made from hot rolled bar. The Commerce Department concluded that hot rolled bar production in most of the Community countries was subsidized; however, they refused to consider those subsidies in evaluating the downstream product, cold finished bar. As a result, a negative finding was made on cold finished bar. In late 1982, the EC entered into a voluntary restraint agreement, thereby settling all outstanding countervailing duty cases. Hot rolled bar was given a specific limitation; cold finished bar was left uncovered, save by a so-called consultation provision. The result was predictable: stymied by the limits on hot rolled bar, European steel makers diverted their production to cold finished bar. During 1981, which was the base year under the EC agreement, the Community's producers had taken a 4.88% share of the domestic cold finished bar market. By 1984, this share had grown to 6.16%. For the first twelve months of the President's program, until European shipments were brought under control by a new agreement, their market share had grown to 9.6%. In other words, the incentives for diversion had caused a doubling of cold finished steel bar exports from the EC.

2. A recent example of diversion is found in the efforts to set up a pipe production facility in Panama that would use Brazilian sheet. The clear objective of that arrangement is to avoid the express undertakings made by the Brazilian government to limit their sheet exports to the United States.

3. A related case affects the American structural steel industry, which now uses 5 million tons of steel a year and sells products worth $6 billion. It appears that countries subject to voluntary restraint arrangements are using fabricators in Taiwan and Singapore to circumvent the limits in those undertakings. As a result, imports from Taiwan and Singapore have exploded, from negligible levels in 1984 and before to tens of thousands of tons this year.

A major problem, however, is developing measurements of the impact of diversion to downstream products. American tooling and machining industries take steel mill products and produce a variety of cogs, gears, and other "widget"-type articles that are used as components of other products. In many cases U.S. tariff classifications do not include a specific breakout for downstream articles like screw machine products. Those items might enter as "parts" of automobiles or farm equipment. Nonetheless, some measurements have been made, and the conclusions are clear:

1. The first example comes from the tooling and machinery industry which I represent. These producers make the tools, dies

and molds that are essential to mass production manufacturing in this country. At its height a $20 billion industry, the tooling and machining sector has witnessed erosion directly proportional to the decline in the U.S. manufacturing base as a result of diversionary dumping of the products made from the tools, dies and molds they produce.

2. The International Trade Commission recently found that the average level of ball and roller bearings imported directly and as downstream products increased from 22% in 1978-1983 to 28% in 1984-1985. In dollar terms, increases of bearings incorporated into downstream imports went from $173 million in 1978 to $431 million in 1985.

3. The National Screw Machine Products Association, for example, has estimated that market penetration by imports increased from 7.9% in 1979 to 11.4% in 1984. There are indications that this penetration has increased even further since then.

4. The forging industry is another example of dramatic increases in downstream product imports. Based on a U.S. International Trade Commission study, imports of forgings in nine categories from 1981 through the first 8 months of 1985 went from 15.6% to 27.2% of the U.S. market. The numbers are even greater in three key product categories. For example, in the period 1981 through 1984, the market penetration by crankshaft imports increased from 43% to 61%, fittings and flanges from 22% to 48%, and undercarriages from 14% to 44%.

5. A recent study analyzes the impact of the downstream phenomenon and underscores its importance to MTC members. According to this study, the steel contained in imports of products such as automobiles and machinery increased by 136% between 1977 and 1985. Over the same years, the steel content of our exports declined by 17%. As a result, the U.S. went from a positive trade balance of 3.1 million tons of indirect trade in steel-containing products in 1977 to an indirect steel trade deficit of 6.3 million tons in 1985. In other words, we had an unfavorable shift of 9.4 million tons of steel during these years. While total steel usage in 1985 was about the same as in 1977 (103.3 million tons vs. 105.3 million tons), apparent domestic consumption of steel products, which is the available market for domestic producers, declined from 108.5 million tons to 97 million tons, a drop of 11%. These changes were in large part due to increases in downstream product imports, from 5.8 million tons in 1977 to 13.7 million tons in 1985. These are tons that could have been supplied by American producers.

6. The Commerce Department estimates that indirect steel imports displaced $8.5 billion or 30% of domestic steel shipments in 1984 alone. The Metalworking Trade Coalition therefore supports current efforts to establish an accurate, ongoing Census Bureau data series to measure the U.S. trade balance annually for products containing steel. We therefore welcome the decision by the Secretary of Commerce that commits the Commerce Department to help fund the receipt of accurate indirect steel trade data.

We do not contend that all the increases in imports of metalworking products are due to diversion. Nonetheless, the evidence is clear that diversion is a serious problem and that the incentives for its expansion are growing in steel and many other industries. There is also no doubt that the net effect of this diversion is to undercut the objectives of our trade laws and our agreements with other countries.

Our proposals to deal with the problem of diversion are, we believe, fair and measured. They are aimed at preventing circumvention of our trade laws and of the international agreements concluded to effectuate those laws. Our proposals are not protectionist, since they do not seek to limit fairly traded imports. Finally, our proposals have been designed with great care to make them easily administrable by the Department of Commerce and other government agencies.

The suggested provisions would deal with three areas:

1. First, we recommend that a new section be adopted to make "diversionary dumping" an actionable unfair trade practice. Under present law, U.S. industries may not object to imports of products containing dumped raw materials or components. For example, if Brazilian steel subject to a dumping finding were incorporated into steel products from Panama that are sold in the United States, the indirect dumping would not be actionable and American manufacturers would have no recourse to U.S. trade law remedies.

Our proposal would cure this situation by requiring, in any dumping investigation of a finished product, that the fair value of a dumped input be factored into the determination whether that finished product is fairly priced in the U.S. market.

Legislation dealing with diversionary dumping was adopted by both houses of Congress in 1984. However, the provision was deleted in conference in response to representations by the Administration that the provision would be too difficult to administer. Our present proposal deals with the administrability issue by making the diversionary dumping provision applicable only to inputs that are subject to outstanding dumping orders or are covered by intergovernmental restraint arrangements that terminate or suspend a previous dumping investigation.

We believe that our proposal is a reasonable response to the realistic expectation that, once an input product is proved to be dumped, it may be diverted to third country producers who will take advantage of the dumped price in manufacturing downstream products for the U.S. market. Because the provision would only apply to dumped imports subject to an arrangement or after a finding has been made that the input was injuriously dumped in the United States, foreign downstream producers will be on notice and have the opportunity to adjust their prices to offset the unfair advantage they might otherwise enjoy in the U.S. market. The net result will be that offshore producers using dumped inputs would be placed on the same competitive footing as U.S. producers.

Language on diversionary dumping is found at Section 314 of S.490. I should stress that that language reflects substantial and sincere efforts by industry to accommodate the concerns of the Administration on legal and administrability issues.

2. Our second proposal is aimed at the diversion that is likely to be caused by the imposition of large dumping or countervailing duties. In such cases, we believe that it is reasonable to expect administering authorities to be alert for the possibility of diversion.

Our proposal would require monitoring of increases in imports of downstream products that are likely to be vehicles for diversion. Where large (15% or more) dumping or subsidy duties have been imposed on input products such as steel -- or where a restraint agreement is used to settle a dumping or subsidy case involving large (15% or more) preliminary determinations of unfair trading -- U.S. producers would be able to identify to the Commerce Department other products in which the dumped or subsidized output is likely to be used as a major part, component or material. Commerce would refer lists of those downstream products meeting the statutory test to the International Trade Commission which would monitor imports of those products.

In the event imports of monitored downstream products from a foreign country increase by more than 5% in any quarter, the ITC would analyze the increase and give public notice of its findings. Thereafter, the Commerce Department could investigate whether dumping or subsidization is occurring, either directly or by virtue of the dumped or subsidized components, and private industry could initiate an appropriate trade case.

Language to achieve these objectives is found in Section 316 of S.490. We understand that neither the Commerce Department nor the ITC would find this provision onerous or otherwise troublesome to administer.

These two proposals are, of course, very similar to and identical in many respects, to the language in H.R.3.

3. Our third proposal would amend the Trade and Tariff Act of 1984 to establish clearer statutory guidelines on "upstream subsidy" investigations. Under most situations, an upstream subsidy is actionable under our trade laws only if it is provided by the government of the country in which the end product is made. One exception to that general rule was incorporated in the 1984 Act to include subsidies paid by a customs union to producers in a member country. We believe that that provision should be expanded to take account of the realities of trade within a customs union. By definition, products of one member country of a customs union are treated as domestic products of other member countries. Consequently, it makes no economic difference whether a subsidy on a component is paid by the country in which an end product is made or paid by another member country.

A perfect example of this situation can be found within the European Community. Cold finished bar makers in the UK have access to subsidized hot rolled bar produced by British Steel. If they purchase that product, their cold finished bar exports to the United States would be subject to upstream subsidy proceedings. However, under present law, the UK producer could buy French hot rolled bar and immunize itself from U.S. trade laws. Since French steel is freely traded in Britain on the same basis as that sold by British Steel, that result makes no economic sense.

Language to achieve this objective is found in Section 10 of S.439, and we urge the Committee to incorporate it into S.490.

Our proposals in this area are fully consistent with the GATT and the Subsidies and Antidumping Codes. The GATT permits the use of a "cost of production" analysis in determining a foreign market value of the like product. Under United States law, when Commerce has "reasonable grounds to believe or suspect" that foreign sales are being made at less than the cost of production, the "constructed value" may be used. That method permits Commerce to disregard any component cost that "does not fairly reflect" the true costs of that input. Consequently, the true costs of dumped components can be addressed in a diversionary dumping case consistently with the GATT and with current U.S. law.

A Private Remedy For Dumping

Under current law, domestic companies that are injured by dumped imports cannot, as a practical matter, be compensated for the injury caused by this unfair trade practice. Under the dumping statute administered by the Department of Commerce, the only penalty is a duty assessed on future imports, which is remitted to the U.S. Treasury. Although the Revenue Act of 1916 has long provided a private right of action for injury from dumping, that statute has never been used successfully because, as a criminal statute, it requires proof that the defendant intended to injure the U.S. industry. Thus, neither the traditional dumping statute (with its prospective, noncompensatory relief) nor the 1916 Act (with its criminal intent requirement) provides a viable means for domestic industries to obtain compensation for injury inflicted by dumped imports.

Currently, the only penalty imposed on foreign producers who violate the dumping law is a dumping duty which is assessed on future imports. Dumping is therefore not deterred because violators know that they will not be punished for past behavior; they therefore can wait until an administrative order is issued before changing their commercial practices. In addition, the dumping duty is remitted to the U.S. Treasury; companies harmed by dumped imports are not compensated for their loss.

We urge Members of this Committee to review pending private damages proposals, such as the provisions of H.R.3. While we believe that exhaustion of administrative remedies three times is too high a threshold requirement, we do believe that decriminalizing and reducing treble damages to single damages in the 1916 Act is most useful. More important from the viewpoint of small and medium-size business is the related provision in H.R.3 that provides for compensation to domestic producers who have been injured by reason of dumped imports, such compensation to be funded by dumping duties collected.

National Security Trade Cases

Section 232 of the Trade Expansion Act of 1962 allows for cases to be brought -- and relief to be granted -- due to imports that threaten U.S. national security. We believe that surging imports of vital manufactured products poses a growing threat to America's national security. This makes it especially important that petitioners in Section 232 cases be given the certainty of timely government responses. At present, however, there are no strict time limits on Presidential decision-making in such cases. For example, in the Section 232 petition filed by the National Machine Tool Builders Association in March 1983, it took more than three years to get a Presidential decision (to pursue machine tool VRAs with major foreign suppliers). As a result, during those three years, imports continued to wreak untold damage on an industry vital to the U.S. defense base.

Congress should -- at minimum -- impose a strict time deadline on decisions by the President in Section 232 cases. We, therefore, support H.R. 3's shortening of the Section 232 time line for decisions by the Secretary of Commerce and S.490's elimination of Presidential discretion when the Secretary recommends action against imports. However, we urge Congress to review, and give further guidance on, the list of factors the Executive Branch should consider in making determinations under Section 232, e.g., whether negative determinations should be allowed based on the fact that surging imports come from U.S. allies as was the situation in the 232 petition brought by the U.S. fastener industry.

Related to national security trade cases is the issue of government payment of antidumping and countervail duties on governmental importations. Dumped and subsidized products, whether imported by the private sector or government, can injure U.S. producers. H.R.3 includes language requiring government payment of penalty duties. S.490 does not. Our preferred language is contained in legislation introduced by Senators Heinz and Glenn, because it not only requires government payment of AD/CV duties, but also requires that such duties be taken into account in awarding procurement contracts. The Department of Commerce has let it be known, in Federal Register comments on this issue, that it would not object were such an amendment to be enacted.

Small Business Access To Trade Remedies

Small businesses do not presently have access to remedies under international trade law. Small business assistance available through the Commerce Department or Office of the U.S. Trade Representative is sufficient to forewarn the small businessman that the cost of presenting an effective case before the International Trade Commission might approach $500,000, perhaps more than the liquidated value of his company. He would also learn that, if successful, any remedy would be in the form of duties paid by the respondent to the U.S. Treasury.

Two steps are necessary to remedy this. First, an expedited, low-cost, "short form" procedure for cases brought before the ITC should be developed. Secondly, because the costs associated with filing and pursuing a case under our dumping and subsidy laws are extremely high, due to the complexity of these laws, many small businesses find that relief from unfair trade practices is beyond their reach. When there is no prospect of recovering the costs of bringing a successful unfair trade case, many petitioners cannot justify the large financial risk of initiating a trade complaint, no matter how strong the case. To remedy this situation, small business petitioners ought to be able to recover attorney/consultant fees in successful trade cases. Such reimbursement could be provided from the collection of antidumping and countervailing duties. Provisions of H.R. 3 strengthening the ITC's Trade Remedies Assistance Office would be helpful together with the compensation provisions of the multiple offenders section of that bill.

Having highlighted these few areas in a very comprehensive piece of legislation, we wish to reiterate our appreciation to all members of the Committee for taking up the trade issue so expeditiously in this historic 100th Congress. Thank you for your interest and attention.

STATEMENT OF JACK VALENTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOTION PICTURE ASSOCIATION OF AMERICA, INC., WASHINGTON, DC

Mr. Valenti. Mr. Chairman, I apologize to you and the committee for my late arrival problem.

The Chairman. He is a modest and shy type so he——

[Laughter.]

Mr. Valenti. I have a strident voice, Senator, and I can ring it up if I have to. I speak today on behalf of the International Intellectual Property Alliance. As a group of enterprises, I think that we really are a massive U.S. trade asset, I represent today book publishing, and auto recording, and computer services and software, and computer and business equipment, and music publishing and films, home video material, television programs—virtually, the entire American copyright community.

At this moment in our national life, I think it is fair to say we are choking; and unless we apply the equivalent of a Congressional Heimlich maneuver, we are going to be in big trouble. [Laughter]

You are being swamped with remedies, and some of them are useful and some of them are not. But I think that to lag or hesitate in this trade bill would be a serious error. I am very confident that, under your command, Mr. Chairman, it won't because if we don't, the future becomes a future without expiation and where error is irretrievable someone once said, repentence is useless.

The creative community that I represent comes to you without any pleas for tariffs or barriers or quotas or restrictions or anything else. We don't want to bar foreign goods, foreign material, or foreign creative products from coming into this country. We are prepared to compete fairly in any marketplace in any country in the world against the best that any country has to offer.

Not only do I think we can compete, I am supremely confident we can prevail without any subsidies, any aid of any kind from our Government, except the quality of what we offer to the global public. We ask for two assurances and only two. First, that we have the same hospitable access to foreign markets that foreign businessmen find so seductive in ours. And second, our intellectual property in foreign countries has got to be protected from thievery and piracy and counterfeiting with the same seamless web of protection that guards other people's products in our country.

I can cite for you in harrowing and specific detail our problems around the world, but I don't intend to name any specific names in this public hearing because, in some cases, we are now in quiet negotiations, negotiations that are threaded through with political delicacy. But without the willingness of our country to move briskly to our aid, if we are unable to reach a concord, I can tell you right now that we are in deep trouble. Now, let me offer just a few tantalizing facts.

A survey by the International Alliance in just 10 countries—just ten—showed—losses to piracy of $1.3 billion. The Motion Picture Association in home video and films—we lose over $1 billion a year. And in one country alone, we lose $200 million in retail value because of thievery, piracy, and inadequacy of protection of our property.

To paraphrase, Mr. Chairman, a former President whom I served very loyally: It is like being nibbled to death by ducks. Because of unscalable trade cliffs, we are being denied entry into a lot of countries. These cliffs are deliberately built to keep our product out and to somehow nourish their own native product, which they think will spring like Athena full blown from the forehead of Zeus. It never happens but that doesn't mean they can't think it.

I am not referring to Communist countries or police state countries. I am talking about friends and allies, most of whom enjoy a bountiful trade surplus with us. So, I have come to you to plead for the protection of the massive U.S. trade asset, which is the fruit of the creative and copyright industry of this nation. We ask that you invite into your bill provisions of S. 335 introduced by Senators Wilson, Cranston, Mitchell, Heinz, Lautenberg, and Wallop. These provisions track an amendment which is in the Ways and Means Committee bill that was offered by Congressman Downey.

What do these provisions offer? First, it instructs the USTR to identify those offending countries which give slack and inadequate protection to intellectual property and those countries which block the entry of U.S. products into that marketplace. Second, it requires the USTR to begin negotiations with those countries to lessen the trade gap which restricts our movements in those countries. Third, it shortens the negotiation period from 12 to 6 months. That is very important.

At the end of 6 months, the USTR recommends action to the President. Fourth, 30 days after the USTR recommendation, the President is empowered to act with full discretion, Mr. Chairman. His range of actions should include a retaliatory trade strike that would remain in force until that offending country opens its borders and protects our product. You and I know that foreign countries' Washington lobbyists are telling their clients that we have got lots of bark, but we have no teeth; and if they just hunker down for a while, everything is going to be just fine.

Let me summarize. What I am suggesting is not protectionist. It is a vivid display of what I think is a Golden Rule of trade, which is: Do unto others in trade as they would do unto you. Second, we don't ask for nor do we want tariffs, barriers, quotas, anything to impede entry into our country; we just want to get into theirs and compete fairly.

And third, these congressional provisions could be a clanging revelatory sound heard around the world in every market where foreign governments severely and routinely restrict us simply because they don't believe our Government is going to be as passionate in the defense of our product as their governments fervently protect theirs.

You are our last hope. I think that unless the Congress stirs itself, we will soon be sitting on the ground telling sad stories of the death of trade.

Finally, it was written a long time ago that the Greeks who were imprisoned in the cave of the Cyclops lived there very quietly while they were awaiting their turn to be devoured. I only hope, Mr. Chairman, that we are less tranquil and not so accommodating in the latter day world. And I thank you.

The CHAIRMAN. Mr. Valenti, I don't think you have ever been accused of that. [Laughter.]

[The prepared statement of Mr. Valenti follows:]

Testimony of Jack Valenti
on behalf of
the International Intellectual Property Alliance
on
Trade Reform and Intellectual Property
April 8, 1987

Mr. Chairman and Members of the Committee, I am grateful for the opportunity to discuss one of the most pressing problems facing our country: how America can effectively compete in the world trade marketplace.

I am speaking not only for the Motion Picture Association of America, but also on behalf of the International Intellectual Property Alliance of which MPAA is a founding member.

The Alliance is an organization composed of seven major trade associations which represent companies with large-scale interests in intellectual property. These are the Motion Picture Association of America; the Recording Industry Association of America; the Association of American Publishers; the Computer Software and Services Industry Association (ADAPSO); the American Film Marketing Association; the Computer and Business Equipment Manufactures Association; and the National Music Publishers Association. Members of these associations include virtually the entire United States copyright community.

For the first time in our history, our country owes more to other countries than is owed to us. Last year alone, our trade deficit reached the staggering sum of $175 billion or more.

The only lasting solution to our trade crisis is to open up foreign markets for our exports. What we seek is for U.S.-made intellectual property --books, computer software and hardware, motion pictures, pharmaceuticals, and sound recordings-- to have the ability to compete fairly in markets throughout the world.

But, today, U.S. intellectual property owners all too often face enormous barriers that thwart access to foreign markets. Even when our products make their way into these markets, they are often subjected to the ravages of piracy and counterfeiting.

Market Access

American intellectual property owners face immense hurdles in achieving the right to market their products in many of the countries of the world. They must overcome such impediments as import duties, import quotas, screen quotas, and discriminatory rules designed to protect local distributors and keep revenues at home. The result is that these barricades rob U.S. companies of their ability to compete fairly in foreign markets.

In India, for instance, U.S. motion picture companies are forced to operate under an agreement with the Indian government which gives regulatory control over their activities to a competing film distribution organization which is a government-operated monopoly. U.S. film distributors in India are subject to endless bureaucratic "red tape," excessive fees which are used to subsidize the government's film distribution system, and excessive taxation and repressive remittance restrictions. Moreover, they are required to make interest-free loans to the Indian government.

Some nations are starting to impose import quotas or onerous duties on U.S. books. In other cases, U.S. publishers are being forced through governmental decree to divest control of their operations to local interests.

Piracy and Counterfeiting

But market access is of no use if the value of the product is destroyed by unrestrained piracy and counterfeiting. And, that's just what is happening.

International piracy and counterfeiting of U.S. owned intellectual property has drained billions of dollars from U.S.

export potential. To better understand the scope of this problem, it is helpful to take a look at some specific examples of how piracy and counterfeiting impact on members of the American intellectual property community abroad.

In India, nearly every videocassette of a U.S. motion picture is pirated; it's difficult to find a legitimate version in the entire country.

Losses from book piracy in ten countries surveyed in 1985 by the Alliance amounted to a startling $400 million. This form of thievery includes commercial reprinting of textbooks, reference and trade books, unauthorized translations and, in many cases, massive commercial photocopying.

U.S. book publishers trying to do business in these nations, including the selling of low-cost student editions, for example, find it impossible to compete with pirates and often are forced to simply withdraw from the market in frustration. Book pirates in such countries as Taiwan and Singapore have found piracy so lucrative that they export pirated editions throughout the third world and disrupt existing markets which American publishers have taken years to create.

The publishing industry reports that at least 560 reference, professional, trade, personal computer and college texts have been pirated and sold worldwide. A pirate can obtain a single edition of a book from the U.S. copyright owner. He then prints and sells, at whatever price the market will bear his illegitimate editions. This activity can paralyze American publishers in a country that does not take stern actions to stop it.

The computer software industry is suffering "epidemic" piracy losses estimated at $35 million annually in Brazil. It has been reported that pirates often give away 5 to 10 software programs with a pirated computer, and throw in pirated computer books and manuals for good measure!

Indonesia has become the world's major exporter of counterfeit audiocassettes. It affords virtually no protection to U.S. intellectual property. Indonesian pirated audiocassettes are exported at the rate of thirty to sixty million units annually. These pirate cassettes are actually exported with licenses issued by the Indonesian government.

All of this rampant international piracy and lack of market access for intellectual property has siphoned off billions of dollars from our trade assets. These twin evils deny American companies that export intellectual property even the chance to try to recoup abroad their enormous investment and product development costs.

The U.S. motion picture and television production industry, for example, earns 35 to 40 percent of its revenue from overseas markets even under adverse current conditions. Each year the U.S. film industry brings to the United States a net balance of payments of $1.1 billion as a trade surplus. But in today's changing marketplace these foreign revenues are in jeopardy.

We must stop these abuses.

We must find a way for creators of intellectual property to effectively enter other nations to the same degree that foreign businessmen can come and enjoy the benefits of the U.S. marketplace.

We must combat rampant piracy and counterfeiting of U.S. intellectual property in foreign countries.

To achieve these essential goals, we seek amendments to S. 490, the omnibus trade reform legislation before this Committee.

Anti-Piracy and Market Access Amendments

The amendments to S. 490 that we seek on behalf of owners of intellectual property, with reference to the problems of both piracy/counterfeiting and market access, would revise Section 301 of the Trade Act of 1974 to do the following:

- First, they would require the U.S. Trade Representative (USTR) to identify offending foreign countries that deny market access or adequate and effective intellectual property protection. This alone would encourage foreign governments to take positive steps to protect intellectual property rights.
- Second, these amendments mandate negotiations with those countries identified by the USTR in an effort to secure better treatment of American intellectual property and to open foreign markets.
- Third, the amendments would direct the USTR to make recommendations to the President regarding retaliation against offending countries which refuse to change anti-trade policies within six months, rather than 12 months as provided under current law. This expedited process is especially important as many intellectual properties -- for example, computer software, records, and movies-- have very short lifespans. Current USTR time frames are too long.
- Finally, the amendments would require a Presidential decision on the USTR's recommendations within 30 days after submission where offending countries persist in refusing to alter their policies. The President would be authorized to retaliate as in any section 301 case involving "unreasonable" trade practices of a foreign government. Such retaliation would not be mandatory.

Mr. Chairman, I hasten to point out that these measures are drawn from two sources.

First, they are very similar to the provisions embodied in S. 335 introduced by Senators Wilson, Cranston, Mitchell, Lautenberg, Heinz and Wallop. Most important, S. 335 directly addresses the dual problems of market access and piracy and counterfeiting, Thus what we owe an important debt of gratitude to the proponents of S. 335.

Second, they are an extension of the piracy/counterfeiting amendment offered by Rep. Tom Downey (D-N.Y.) and adopted on March 25 by the House Ways and Means Committee.[1/] The Downey amendment strengthens Section 301 of the Trade Act of 1974, as do the provisions we propose today.

Mr. Chairman, it is important to note that the Alliance strongly supports the Downey amendment adopted by the House Ways and Means Committee. We believe it will a significant step forward in the on-going efforts to combat the piracy and counterfeiting of American intellectual property abroad.

This anti-piracy provision would fill an important gap in our trade laws by specifically dealing with piracy of intellectual property in foreign markets.

While there is a provision in U.S. trade law, Section 337 of the Tariff Act of 1930, that regulates the importation of pirated products into the United States, there is no counterpart directed at piracy and counterfeiting in foreign markets. The Downey amendment would fill that void. We urge this Committee to incorporate this type of amendment into S. 490 at mark-up.

The Need for Market Access Protections Within S. 490

At the same time, we request that this Committee complement what the House Ways and Means Committee has done by adopting our proposals regarding market access barriers.

Our market access provision would simply shorten the time frames for USTR actions to open up foreign markets to American intellectual property when those market are beset with barriers and barricades which are unfair and disruptive. The procedures regarding USTR recommendations to the President in market access cases would parallel those found in the House Ways and Means Committee bill for anti-piracy actions.

A market access amendment along these lines would prompt nations throughout the world to observe the Golden Rule of Trade and permit American businessmen the same freedom to market and protect their goods that foreign exporters enjoy here.

We urge also that the Committee build upon the intellectual property protections already in the Generalized System of Preferences and the Caribbean Basin Initiative, to make them more effective and flexible than they already are in opening foreign markets to our companies and to combat intellectual property piracy.

Conclusion

The amendments we propose would protect the interests of a variety of industries in the U.S. that are involved in the creation and marketing of intellectual properties.

Companies that would benefit from these protections are active in areas as disparate as film production, publishing, semiconductor design and production, computer software and pharmaceuticals, to name but a few. In that respect, the provisions we support seek to remedy a trade problem that is generic in nature, and not "sector specific."

We seek no more and no less protection for the needs of owners of intellectual property than is justified by the unique nature of the problems we have outlined and the wide variety of industries affected by these problems.

There is a broad consensus on what our problems are, and we have received support and encouragement from our friends in both Congress and the Administration.

But the time has come to go beyond our activities of the past, to redouble our efforts in the international trade arena and strive to resolve our trade difficulties ultimately through bilateral negotiations rather than confrontation. Statutory provisions of the sort I have outlined here today would be a giant step in that direction. I urge each of you to support their inclusion in S. 490.

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[1] It is important to note that as introduced, S. 335 required the President to take retaliatory actions against offending nations. In order to accomodate the concerns of the Administration, the mandatory retaliation provision was deleted from the Downey amendemnt to H.R. 3. The Alliance is amendable to this deletion.

The CHAIRMAN. Let me further understand on section 301. Do I understand that you are not asking for mandatory action?

Mr. VALENTI. That is correct.

The CHAIRMAN. In places where they refuse to distribute intellectual property?

Mr. VALENTI. We are not asking for mandatory action on the part of the President. We are asking that the President have discretion to move as he sees fit.

The CHAIRMAN. Let me get to another point. I have been concerned about the Canadian Government speaking of going to a licensing arrangement. Now, we have gone on for a long time trying to convince the Mexican Government to move away from licensing, and they are doing that. Our major trading partner in the world going to a licensing arrangement concerns me, and I have been in communication with the Prime Minister, Mr. Mulroney, and I have a letter from him assuring me that it is an open market for foreign films.

He says the new policy will facilitate foreign investment by film companies wanting to establish Canadian subsidiaries to distribute their film and video products. Would you comment on that?

Mr. VALENTI. Mr. Chairman, I will tiptoe delicately around this one. The fact is, one, we do not confront or challenge by licensing arrangements in any country in the world today—in the free and developed world. Number two, I understand the proposal says that those pictures and home video material for which American companies do not have worldwide rights—however that is defined—must stop at the border and then turn over those products to Canadian companies for distribution in Canada.

The problem can be summed up in one sentence, and that is we don't confront this anywhere in the world. I think if we submitted to this, it would spread like a viral contagion around the world and would be terribly injurious to our trade.

The CHAIRMAN. Thank you. Mr. Hart, U.S. law requires a special duty to offset dumping; and I think dumping is almost universally condemned. My concern is: How do we determine this about China when it is so difficult, from what I am told, to determine the market price of a product within their own country? How do you do that?

Mr. HART. Probably—and Senator, I am going to speak as a businessman as opposed to a Government official—in the trading business, obviously, before we do trade we try to develop baseline pricing both in terms of what the cost is of manufacturing the goods and also the cost that we can sell the goods before we enter into any trade. And I would contrast China with Japan, as an example. Let's take nails as one of the things that we might trade.

The CHAIRMAN. That is good; that was my next question. So, you go right ahead with that.

Mr. HART. Nails, as nearly as we can determine—and the Chinese have been very forthright with us—what their pricing is to us and to the other people that export from there, as close as we can tell, it very closely follows both their materials cost and also their labor cost.

Now, if on the other hand we take Japan—and we have had some dealings there—not with nails, but with other things—frequently we find a situation in which the internal consumption tax in Japan itself makes their goods more expensive to the Japanese than they are to us. We have not found that at all here. As far as we can determine in the dealings that we have had with the Chinese, it has been as closely related as possible.

Now, their standard of living and their cost obviously is a lot lower than it is even in South Korea which is close by. If you put an economic scale together of Japan, South Korea, and China, you can find some pricing comparisons that work; and indeed, that is what we would recommend that the Commerce Department do, in applying any dumping laws and anything else. You can actually program off of that to see what the price should be.

The CHAIRMAN. Now, let us explore another issue. Mr. Baker, you have two proposals relating to tariffs; and one of them pertains to noncontroversial duty suspensions.

Mr. BAKER. Right.

The CHAIRMAN. I understand that proposal, but I would like for you to review in more detail the second one, suggesting what we do about tariff cutting authority for chemical products.

Mr. BAKER. The suggestion that I believe the Administration has put forth is that there be almost unlimited authority for tariff cutting regardless of whether individual products manufactured in this country are sensitive to importation of non-U.S. produced products. What we are suggesting is that, if a U.S. manufacturer can demonstrate, say, through the ITC, that a 100-percent reduction in tariffs would injure his industry, exemptions could be granted that would reduce the blanket authority of the administration in those cases where they are negotiating tariffs across the board.

The CHAIRMAN. Would you put a floor on that?

Mr. BAKER. Put a floor or a limitation or an exemption if the product was deemed to be of such a sensitive nature that we ought to continue to manufacture it in this country and not have its position eroded by the complete elimination of the tariff process.

The CHAIRMAN. Let me comment that the Senate is in session, and I am concerned about a vote coming up. So, once again, I will ask that we stay within the limitations of time. I will pass to Senator Chafee at this point.

Senator CHAFEE. Thank you, Mr. Chairman. First of all, I think this is a good hearing today; and I want to congratulate you for it. I think some of the testimony we have had about what is taking place is really shocking. It corroborates what we have already heard. I think what Mr. Valenti has testified to is really an outrage, and I just can't understand why we permit it.

I mean, let's take Taiwan. There is a country that has a mammouth trade surplus with us and look what they are doing. Indonesia, I guess, is the greatest violator from your testimony. Is that correct, Mr. Valenti, although there may be plenty of competition for that?

Mr. VALENTI. That is correct.

Senator CHAFEE. Do I understand that you are interested in incorporating the Downey amendment into our bill. Is that just the piracy one?

Mr. VALENTI. Yes. That is just part of it, Senator Chafee.

Senator CHAFEE. You have two things you are working for: market access and prevention of piracy?

Mr. VALENTI. That is correct.

Senator CHAFEE. All right. Now, the Downey addresses the piracy?

Mr. VALENTI. That is correct.

Senator CHAFEE. I am not totally familiar with that; but in other words, that would satisfy you on that particular score. Is that correct—on the piracy?

Mr. VALENTI. Yes, sir. There are a few additions that we might suggest, but essentially piracy, intellectual property protection, and market access are on parallel tracking, that is, the USTR has to prepare each year a catalog of those offending countries that are either pirating our material or are not protecting it or are denying us market access. And then to take the high priority countries—the two, three, four, five and self-initiate 301s; compress the time period from 12 months to six months; offer a recommendation to the President; he acts on it 30 days after he receives it.

It is the time compression, and it is a track to run on with a catalog of offending countries, and then a velocity of movement within the USTR to move.

Senator CHAFEE. All right. As I say, I am absolutely outraged at what is taking place. You and I have worked in the past on similar matters dealing with your exports abroad which, as you pointed out, are one of the Nation's major export products. So, what I would like you to do if you could is, get your folks to come up with the Downey amendment perfected as you would like to see it. I would be interested in having that before us, if you could do that?

Mr. VALENTI. I would rejoice in doing it, sir.

Senator CHAFEE. I want to indicate there is a step between submitting it to me and it being enacted into law——

[Laughter.]

Senator CHAFEE. Don't host a party yet to celebrate.

Mr. VALENTI. I will channel through you any time, Senator.

Senator CHAFEE. Now, the next one is Mr. Andrews and your soda ash problem. That also is an outrage. I think we all have a sense of frustration up here. Here we are, the largest market; every nation wants to come to us to sell and we levy no requirements on them, so it seems. I hope we can correct that.

Now, for Mr. Hart, I am sorry that some of our members aren't here who have been especially interested in this particular matter. It has been suggested by several members of this committee that we enact what is known as a "workers' rights provision." Now, what that would do is make violation of workers' rights the basis for a section 301 case, an unfair trade practices case. If successful, the section 301 procedure could mean a ban on imports from that country.

Now, clearly, China would not qualify. No one is suggesting that there is free trade unionism in China. Now, what would be the result if we should enact such a provision in this trade bill?

Mr. HART. I think very much, Senator Chafee, as I predicted in here. You know, we have had a series of instances in which things like paint brushes and nails and so forth have been subject to anti-dumping provisions. Well, instead of the trade with China growing, which it should, when you look at the population and you look at the things that they need and the things that we can supply, anything else that adds to the complications of dealing with them—which this obviously would—they have to have hard currency to buy.

You know, in my opinion—and let's take nails again since that it is my particular ox that is getting gored in this case—would you rather sell them 747's or nails?

I would rather sell 747's.

Senator CHAFEE. Could we safely say that if we enact a workers' rights provision and thus bar China from selling anything to us, that the chances of our selling them 747s is extremely modest?

Mr. HART. I would say somewhere between nonexistent and nil. [Laughter.]

Senator CHAFEE. That doesn't leave much wiggle room. All right. Does anybody else have any comments on this?

THE CHAIRMAN. Go ahead, Senator.

Senator CHAFEE. No, I think that the others are in different areas, and I won't pursue that. Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, we have heard some very diverse views this morning, and you haven't been timid in speaking to them. That is part of the process. I think it is very helpful that, in trying to work out a trade bill, we listen to many different interest groups and how the bill affects this great economy of ours and the country, whether you are an import dealer or whether you are a domestic producer. In the give and take of trade today, given the limits to free trade, how we meet that in a democratic society is very important. It has been most helpful to us.

Senator CHAFEE. Mr. Chairman, I have one other question, if I might?

The CHAIRMAN. Yes.

Senator CHAFEE. This panel represents the free traders, the importers, basically.

Mr. BAKER. Exporters.

Senator CHAFEE. Exporters; all right. But Mr. McElwaine doesn't represent exporters; he represents importers.

The CHAIRMAN. That is what I was referring to, Senator, when I talked about the diversity of the panel.

Senator CHAFEE. The diversity in this panel itself.

The CHAIRMAN. That is right.

Senator CHAFEE. Regardless of your interests on exporting or importing, is there anybody that can see any reason why we shouldn't follow the recommendations or address the problems that Mr. Valenti has raised, namely the piracy matter and denial of market access? First, let's take the piracy. What is the down side in our doing something about this piracy thing? Mr. McElwaine.

Mr. MCELWAINE. There is no down side, Senator Chafee. Unfair trade practices should be prosecuted to the absolute extent of our existing trade laws wherever they exist. Our only plea to this committee has been and always will be that free and open trade within the parameters set forth for international agreements not be considered as unfair.

But where unfair trade practices are followed, our Government should take action. Our Government has been negligent in that case in many instances, and we wholeheartedly support him and I think that Mr. Valenti is deserving of all the support that this committee and the Senate can give him.

Senator CHAFEE. Now, Mr. Andrews, suppose we came down like a ton of bricks on Taiwan. Taiwan and Indonesia. Let's take those; Mr. Valenti mentioned those as two principal offenders. Suppose we did something about that? What would happen to your soda ash sales?

Mr. ANDREWS. Of course, it is a risk, and we are totally dependent upon having open access to every market in the world. We sell in 35 countries around the world. However, I don't think Mr. Valenti's complaint of piracy would impact upon soda ash. I think it is pretty well recognized within the business community that the right to protect what is yours is a given. So, in the piracy act, I really don't see that as being a major threat.

Our biggest concern, and it does share a little bit with my colleague here on my right, is that we restrict trade into the United States; and as we do that, it is going to limit what we as exporters can do. And we ask the Senate and we asked the House when we have had the opportunity that what we really want is free trade. We don't want new barriers here. We just want you to ask the people to demand a right to compete in their marketplaces.

Senator CHAFEE. Now, Mr. Valenti, I went into this a couple of years ago on the Taiwanese situation. I am sure I talked with you or your office on it; and the answer seemed to be: Oh, they are coming along; they are straightening out their procedures; they are cutting down on this. Their government is opposed to this piracy business, this duplication, well stealing of our products, not so much films, but tapes and other things. What is the answer to that? Give me a report card on the Taiwanese.

Mr. VALENTI. A short answer is that they are trying to mend their ways. How it will work out, I don't know. It seems to be favorable so far, I think but it is not only films, it is books.

Senator CHAFEE. Give us a report card. I don't mean how they are trying but where they stand now. Do you give them a D or an F?

Mr. VALENTI. I think I would give them a passing grade now, Senator, because they are strengthening their copyright laws. They have rescinded some of the restrictions which was working an injury on the film industry. They are straightening out. They say their laws which are keeping books from being pirated—and as I said, I have brought a number of them along to show you the extent of the piracy—and I may be the only man on this panel who has an interest in piracy because they stole my book, too. [Laughter.]

The CHAIRMAN. Let's limit the commercials. [Laughter.]

Mr. VALENTI. I would give them a passing grade now. However, that is a mid-term exam. The final exam has not yet been taken.

Senator CHAFEE. You particularly touched on India and what they do as far as the distribution of your films. Do I understand from your testimony that they levy a tax on you for your films so that they can train their own film makers?

Mr. VALENTI. Well, I don't find that offensive. The answer is yes, and I don't find that offensive because we like to see other countries' film makers trained; however, what they do do is they have a mechanism—the National Film Development Corporation—which is a government monopoly which distributes film, and it the channelway through which we go into India, and it is also our competitor. The final answer is we are very unhappy with the arrangement in India at this time.

Senator CHAFEE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Wallop.

Senator WALLOP. Mr. Chairman, thank you. I will just begin by welcoming my friend, John Andrews, on the panel. He and I have traveled quite a lot—I not so much as he—to the Far East, but on behalf of the product, soda ash. President Kennedy used to call it "soder ash." John, let me just ask you if you think that the recent sanctions that have come about in response to the semiconductor situation will have an effect on the business of ANSAC in Japan?

Mr. ANDREWS. Senator, I guess I would have to say that I don't see an impact at the moment. In fact, it is almost the reverse. I find it remarkable that it seems to me that we are on the defensive about the semiconductor case, which is the most amazing thing to me. We have asked the Japanese to live up to their trade agreements with us. They have not; so, we have imposed some penalties. And now, all of a sudden, we are on the defensive.

At the moment, I think it has slowed down the proclivity of the various agencies to go after our case. So, I am not sure that it is a positive.

Senator WALLOP. You have had personal experience with that within the U.S. Trade Representative's office, haven't you?

Mr. ANDREWS. We have had several discussions with various agencies where they have indicated that their ability to move on new issues is somewhat limited by the present impact of the semiconductor case.

Senator WALLOP. As well as the ability to move on old issues of some standing?

Mr. ANDREWS. This is a relatively old issue.

Senator WALLOP. Mr. Chairman, that is one of the things that has been distracting, with this new-found courage on semiconductors; on all other fronts, they have backed off. They figure they can only play one ball at a time. And we have had a serious dimunition of effort on behalf of the—issue, in pursuit of this, since this finding on semiconductors has taken place. And that seems to me to be only playing into the hands of the Japanese.

But it would seem to be a time to push forward on all fronts because the warning has been so explicit in the issue of semiconductors. For heaven's sakes, all the other things ought to be ripe and be viewed as ripe in behalf of the efforts of the Trade Representative. But it seems that they have gone the other way; and I hope that in the process this committee can make known that we view it as a time of opportunity, not a time of retrenchment. Mr. Chairman, I have no further questions. I am just glad we had the opportunity to bring that up.

The CHAIRMAN. I certainly agree with Senator Wallop that we shouldn't have a policy just for one industry. We need a policy for all industries, and it is a tough line we walk when we say to them: You must open your markets. And, if they do not, then we retaliate; but I don't know what else you can do to get them to take this seriously.

And as I listened to Mr. Andrews' statement and the reduction in your price by 35 percent and being exceedingly competitive in your product, and then the kind of statements that you receive in that regard, it is certainly a clear case.

Senator WALLOP. That man, MITI Minister Karota, during the reception that ANSAC had for me in Japan, was in the back of the room mocking me while I was speaking and mimicking gestures that I was making and other things. Afterwards, having already had a conversation with Mr. Andrews, he came up and as much as told me that the other people who had given me commitments and promises during my trip were merely government officials—that the bureaucracy was where the action was, and the bureaucracy wasn't about to act.

At least one can say he is honest. You know precisely where you stand with Mr. Karota, but it does seem that the bureaucracy is unwilling to respond to the political branches of government.

The CHAIRMAN. Thank you. During the course of these hearings, we have had almost every member here. Senator Riegle, any comments you might have?

Senator RIEGLE. Thank you, Mr. Chairman. In the Banking Committee this morning, we are having a panel of major witnesses on the question of hostile takeovers and insider trading. So, that has kept some of us up there. I serve as Chairman of the Securities Subcommittee; so it has been impossible to be here before this particular moment.

Let me just say, Mr. McElwaine, I have read your statement, and I want to take strong exception to it in a couple of respects. And then, I want to ask you a question or two. I think your assessment is just wrong in terms of what might result if S. 499 were enacted because it provides the same remedies that may be imposed—under the current law for a 301 case. My bill provides the same list of remedies that are currently available to the President; and of course, under my bill he has the power to waive those if it is determined that they would do more harm than good.

But without getting into a long debate on this, let me pose a situation for you that really raises my blood pressure and I think ought to raise yours as a person who not only represents your organization but, like the rest of us, is an American concerned about what happens to the future of this country and so forth.

I have an auto dealer out in Michigan who wanted to open a retail automobile dealership in Japan and found that he could not do so. So, I wrote to the U.S. Ambassador to Japan, Ambassador Mansfield, and I asked what my automobile dealer might do to get into that market. He was prepared to spend his own money and go over and merchandise and so forth.

It took a long time for me to get a letter from the Ambassador; but when I finally did, after you got through all the mumbo-jumbo, the bottom line was you can't open an automobile dealership in Japan that way.

And I am very bothered about that, and I would think that you, representing foreign car dealers in the United States ought to be bothered by that as well. Don't you think we ought to have equal access in the two markets?

Mr. McELWAINE. I am not familiar with the incident that you refer to, Senator. I do know that in recent years, BMW and Volkswagen and now Mercedes-Benz have set up their own distribution operations in Japan and are very successfully selling their products with, in percentage terms, huge increases in the volume of car sales. And they seem to find it a market that is reasonably open.

Senator RIEGLE. Are you then disputing the point that a dealer, if he wants to go over and buy a piece of land or rent a building and start selling cars, is free to do so in Japan?

Mr. McELWAINE. As I said, I am not familiar with——

Senator RIEGLE. I don't want you to mislead the committee because you can't do that; and if you want to assert that you can, then do it. I don't want you to give me an evasive answer in response to the specific example that I have given you.

Mr. McELWAINE. No, I wasn't trying to be evasive, Senator. I am familiar with what the German manufacturers have been able to do with their own operations, and I am surprised to find that an American entrepreneur who wanted to do the same thing hasn't been able to. I am not familiar with the laws that would govern that.

Senator RIEGLE. You ought to take a look at that. Is it disturbing to you that Japanese cars are sold in Japan at higher prices for the same model than those models are sold here in the United States? And what accounts for that? Why would a car or truck—the precisely same model and make—sell for a higher price in Japan—the Japanese car or truck—than it would sell here in the United States?

Mr. McELWAINE. I would assume that most of that has to do with the Japanese value-added tax, which is added to the retail price of the car in Tokyo. We don't have a value-added tax in this country, so it wouldn't be reflected. I would assume it is that. Over the last 5 years, the majority of the profit of the Japanese automobile manufacturers has come from the 25 percent of their product that they sell in the United States. Obviously, they are not dumping the product here. They are making very substantial profits on it.

Senator RIEGLE. There is a serious question about that, and we are raising an issue now on light trucks because there is every appearance that they are dumping, that given the changes in currency values, they are selling—if not substantially below their profit margins—perhaps even below their cost of production; but that is an issue that we are pursuing through a separate channel.

Can you tell me roughly the number of American cars we sell in Japan each year and the number of Japanese cars sold here in the United States?

Mr. McELWAINE. We sell, of course, a very limited number of American cars in Japan. The number that occurs to me is somewhere around 7,000. It is a pittance, but of course, we also make virtually no effort to sell American cars in Japan.

Senator RIEGLE. I have given you one example of an effort that was made that was thwarted; but how many Japanese cars are sold here each year?

Mr. McELWAINE. The Japanese quota is set at 2,300,000.

Senator RIEGLE. Last year, the United States managed to sell in Japan—which is virtually an impossible market for American manufacturers to penetrate—2,300 cars. We had over 2 million coming the other way; as you say, that is the limit. I gather from the weight of your testimony you think that that is basically a pretty good exchange. There is sort of an implicit argument in your testimony that that is fair, and we ought to be grateful for it. I think you really ought to ponder what those numbers mean, what that means to our trade deficit, to our debtor nation status; and I think your organization has some obligation to look at the unfairness that is in the trade relationship, apart from just the shear economic arguments that you advance. I wish you would do that.

Mr. McELWAINE. We would be happy to look at that, Senator. I don't believe and I haven't said that I feel the imbalance in our automotive trade is fair or acceptable; but I think it is more a measure of the lack of interest the American manufacturers have in exporting automobiles than it is in any unfair trade practices. We still have yet to ship to Japan a car with a steering wheel on the right-hand side; the Japanese drive on the opposite side of the road from us. You can imagine the hazard involved in driving that kind of an automobile on Japan's two-lane highways.

Senator RIEGLE. Mr. McElwaine, let me just finish because my time is up. I have heard that argument a thousand times. There is an argument for why we can't get in with semiconductor chips, why we can't provide airport equipment, why we can't sell supercomputers, why we can't provide 1,001 things; why our oranges are not sufficient, why our beef isn't acceptable. And I think you make a very attractive spokesman for that point of view on this issue; but the pattern is so pervasive that, if you really can't see it—not only in the industry area that you represent, but across the whole range of products—I think it is a kind of blind spot that poses a real danger for this country.

When Japan runs a $60 billion a year trade surplus with us after the dollar has gone down 40 percent against the yen, there is a serious problem. And in terms of not being willing to face these problems in terms of the magnitudes of what is happening here, you are putting this country in jeopardy. And there will come a time, I think, when all of us, including yourself, are going to regret very much that we weren't insisting on a fair relationship.

The CHAIRMAN. Thank you very much, Senator Riegle. Just for the record, Japan does not have a value-added tax. Prime Minister Nakasone has proposed one, and that is being debated at the present time. Thank you very much for your attendance. We appreciate it. The hearing is closed.

[Whereupon, at 11:28 a.m., the hearing was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

COMMENTS OF THE TEXTILE AND APPAREL GROUP OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS (AAEI-TAG) on H.R. 3, Title II of S. 636 and S. 490

We are writing on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers (AAEI-TAG) to express our views on the tariff negotiating authority provisions included in S. 490, Title II of S. 636 and Title I of H.R. 3. S. 490 would extend the President's authority to reduce tariffs under section 102 of the Trade Act of 1974 subject to two conditions: 1) rates could be reduced to no lower than 50 percent below current MFN rates; and 2) tariff reductions would be subject to approval under Congressional fast-track procedures. S. 636 would grant the President 10 year authority to proclaim tariff reductions. H.R. 3 would grant the President 6 year tariff proclamation authority, but prohibits the President from reducing tariffs below 40 percent of the existing MFN rate on those items which the International Trade Commission determines that reductions in excess of that amount would have a significant adverse impact. H.R. 3 also requires that implementation of tariff reductions on items determined to be import sensitive must be staged over a ten year period.

AAEI-TAG strongly opposes any restrictions on the authority to proclaim tariff reductions, particularly with respect to textile and apparel articles. The restrictions on the President's tariff negotiating authority will hinder his ability to participate meaningfully in New Round negotiations. In particular, restrictions on or exclusion of the authority to proclaim tariff reductions on textile and apparel articles will jeopardize efforts to use tariff reductions as leverage to gain greater access in developing country markets and to pursue negotiations to gain greater international discipline in services, investment and intellectual property.

Claims by the domestic textile and apparel industries that tariff reductions on textile and apparel imports should be prohibited or severely restricted on the grounds that such tariffs have been reduced in the past or because the industry is not competitive are unfounded. The domestic textile industry has made the same argument to Congress before each of the major trade rounds. The domestic textile industry's efforts have been highly successful and the U.S. has not made significant reductions in its textile and apparel tariffs in any of the prior trade rounds. As a consequence, the average *ad valorem* tariff on textile and apparel articles is 5 times as high as the MFN rate for all other dutiable imports.

The domestic textile and apparel industries cannot claim that they will be unable to remain competitive in the face of additional tariff cuts. Reliable economic information points to the robust health and increasing competitiveness of the textile and apparel industries. Yet, these industries enjoy not only the benefit of extraordinarily high tariffs but are also protected by highly restrictive quotas covering the majority of U.S. textile and apparel imports.

We have attached a fact sheet including more detailed information on the state of the domestic industry.

AAEI-TAG, therefore, respectfully urges the Committee to adopt the provisions of Title II S. 636 granting the President unrestricted 10 year tariff proclamation authority.

DATE: April 21, 1987
(Contact Person: Christine Bliss 429-9355)

THE DOMESTIC DIE CASTING INDUSTRY: UNFAIR INTERNATIONAL TRADE PRACTICE TRENDS

Today, the domestic die casting industry is locked in fierce competition with, not only a variety of competitive materials and manufacturing methods, but with a veritible tidal wave of imports. The economic well being of the domestic die casting industry is vital to the overall economy; supplying products to the defense, automotive, data systems, electronics, and construction industries, etc.

Competing with alternate materials and methods is, in fact, a function of free trade. The domestic die casting industry, however, is now an (internationally) trade injured industry. At issue is imported die castings supplied as sub-assemblies and/or assemblies; and more recently, unfinished die castings themselves. Principally, such castings are manufactured in the lesser developed countries of the Pacific Rim and South America.

Die casting manufacturers operating in countries such as Taiwan, S. Korea, The Phillipines, Brazil, Argentina, Portugal, etc., are provided numerous manifest and latent subsidies that constitute unfair trade advantages. It is that group of latent subsidies that perhaps are the most injurious. Of consequence is the ability to operate without the constraints of health, safety, and environmental considerations. Clearly, there are examples of subsidized wages, equipment and other capital costs, energy costs, along with a morass of trade restrictions preventing access to such markets by the domestic industry.

Equally important is the potential injury caused to the domestic industry by the importation of die castings that do not conform to domestic manufacturing standards. This aspect of trade injury is somewhat elusive, but it is predictable that the functional domestic die casting industry will contract as a direct result of poor quality imported die castings. Further, the typical consumer is faced with the threat of personal injury in cases where sub-standard die castings may fail.

Case in point are three (3) imported products containing such sub-standard die castings. They are as follows:

1. Tubing Cutter, 1" Capacity. Imported by TIBEX INTERNATIONAL, INC., New York, New York. Made in Japan, Item No. 2150.

2. 6½" Utility Knife. Imported by CUMMINS-MACK, Franklin Park, Illinois. Made in Taiwan. Stock No. 4470.

3. Apple Slicer-Corer. Imported by KONE KITCHENS, El Segundo, California. Made in Taiwan.

Each of these items was purchased randomly in a discount store in North Ridgeville, Ohio. The die cast components were disassembled and prepared for spectrographic chemical analysis (see enclosure). The results indicate that none of the die cast components are in compliance with any domestic specification. The TUBING CUTTER and UTILITY KNIFE contain quantities of lead that exceed accepted (domestic) industry standards by a factor of 4 to 5. Such gross lead contamination will categorically cause component failure. Given that both items contain sharpened cutting surfaces the user may suffer injury ranging from a simple cut or scratch, to permanent loss of motor functions, to the loss of a finger if either item were to fail in actual use. The APPLE SLICER-CORER contains excessive iron content that may lead to brittle fracture and endanger the user in the manner described previously.

Such a blatant disregard for scientifically documented chemical standards clearly constitutes unfair trade practice while placing the user of such components in obvious jeopardy.

Another example of trade injury to the domestic die casting industry is the importation of bootleg products that are represented as being those of domestic manufacturers. Such products are unauthorized, inexpensive duplicates generally of sub-standard quality. While cases involving Cartier and Rolex watches have received some measure of publicity, they do not constitute a serious threat to the consumer. Admittedly, these instances cause economic harm. More serious are those cases that involve industrial products that must perform to certain codes and standards. The HALEX COMPANY (Cleveland, Ohio) has documented proof wherein zinc alloy die cast electrical conduit fittings (romex connectors) are being manufactured by an oriental pirate. Certain specific fittings contain the HALEX name, trademark, and other features unique to HALEX COMPANY's product. Such components must comply with industry standards specified by Underwriters Laboratory, ASTM, N.F.P.A., and others. Importation of such sub-standard bootleg die castings underscores the scope of unfair trade practices bearing on the domestic die casting industry. Another matter is the undeserved, implied liability assigned to manufacturers such as HALEX COMPANY and others.

A further threat to the domestic die casting industry is introduction of non-standard zinc and aluminum alloys into the scrap recycling system as imported products (containing castings made from such alloys) are discarded.

Recycled zinc alloys, while constituting a small percentage of total domestic zinc alloy consumption, nonetheless have no tolerance for the amount of lead contained in the imported tube cutter and utility knife referred to earlier. Introduction of such grossly contaminated alloys creates a significant economic hazard.

Recently, certain Japanese automakers have begun producing cast aluminum wheels using an alloy modified with antimony. One company operating a facility in the United States is proposing to manufacture similar wheels here. The use of antimony creates real environmental as well as hygiene issues in addition to technical issues (see enclosure). First, antimony is not, nor has ever been used in the production of aluminum alloys in the United States. Antimony is a heavy metal and has been found to be toxic at low concentrations. Alcoa, for instance, is on record as refusing to produce antimony containing aluminum alloys. Of technical note is that trace concentrations of antimony in aluminum scrap neutralize the modifying effect of benign elements such as sodium or calcium. It would appear then that the Japanese are exporting hygiene, environmental, and technical problems to the domestic secondary aluminum smelting industry. To overcome these will add cost to the product further compounding an already difficult situation.

CHEMICAL ANALYSIS

Randomly Selected Products Containing Imported Die Castings

Zinc Alloy Die Castings

1. Tubing Cutter, 1" Capacity. Imported by TIBEX INTERNATIONAL, INC., New York, New York. Made in Japan. Stock No. 2150.

Al	Mg	Cu	Fe	Pb	Cd	Sn	Zn
3.90	0.003	.54	.03	.027	.001	.0075	Bal

2. 6½" Utility Knife. Imported by CUMMINS-MACK, Franklin Park, Illinois. Made in Taiwan. Stock No. 4470.

Al	Mg	Cu	Fe	Pb	Cd	Sn	Zn
3.73	.015	.38	.01	.019	.001	.003	Bal

3. Accepted industrial specification for zinc die casting alloy: ASTM AG40A, SAE 903, Zamak 3 (commercial)

Al	Mg	Cu	Fe	Pb	Cd	Sn	Zn
3.50 min 4.30 max	.02 min .05 max	.25	.10	.005	.004	.003	Bal

Aluminum Alloy Die Casting

1. Apple Slicer-Corer. Imported by KONE KITCHENS, El Segundo, California. Made in Taiwan.

Si	Fe	Cu	Mn	Mg	Cr	Ni	Zn	Sn	Ti	Others Each/ Total	Al
8.40	1.80	2.80	.17	.15	.03	.15	2.85	.06	.03	-/.242	Bal

2. Accepted industrial specification for aluminum die casting alloy: AA, A-380.0/D, SAE 308

Si	Fe	Cu	Mn	Mg	Cr	Ni	Zn	Sn	Ti	Others Each/ Total	Al
7.50 min 9.50 max	1.3	3.0 min 4.0 max	.50	.10	--	.50	3.0	.35	--	-/.50	Bal

PROPOSED AMENDMENT

IMPORTED METAL CASTINGS/CAST METAL PRODUCTS

Imported metal castings/cast metal products(1) must comply with appropriate domestic industrial, federal, and commercial specifications(2) and/or equivalent recognized international specifications(3) with respect to chemical content and metallurgical characteristics of the alloy(s) used in the manufacture of such imported metal castings/cast metal products.

Importation of metal castings/cast metal products must be accompanied by documents listing such product(s) and the specification(s) of compliance.

Imported metal castings/cast metal products entering the country without proper documentation will be quarantined at the P.O.E. and will remain under the jurisdiction of U.S. Customs unless or until the importer of record can substantiate compliance with an approved specification or standard. All costs associated with the handling and storage of such product(s) deemed to be in violation of the legislation will be the responsibility of the importer of record. No product(s) will be granted entry into the domestic market until all related costs are paid in full. Product(s) quarantined in excess of 90 days may be subject to a penalty not to exceed $100,000 per individual violation. Product(s) quarantined in excess of 180 days will be considered property of U.S. Customs. Such instances will constitute a violation of the legislation. All costs associated with the handling, storage, return, and/or disposal of such product(s) will be the responsibility of the importer of record. Such cases may be construed as intent to commit an unfair trade practice.

In cases where imported metal castings/cast metal products enter the domestic market accompanied by false and/or inaccurate specification(s) documents an unfair trade practice will have occurred. Protection from such unfair trade practices may be sought from the importer of record and/or the manufacturer to the fullest extent of the law.

(1) Imported metal castings/cast metal products. Includes castings made of aluminum, copper, iron, magnesium, steel, zinc, and other metal alloys. General product groups include cast ingots, centrifugal and/or continuous castings, die castings (pressure and gravity, e.g., permanent mold), investment castings, sand castings and castings manufactured by other processes. Imported metal castings/cast metal products, unfinished, semi-finished, and/or those contained in sub-assemblies and/or assemblies will be subject to the legislation.

(2) Domestic Specifications. A.S.M., A.S.T.M., A.I.M.E., D.O.D., Federal, Military, S.A.E., or other appropriate specifications.

(3) International Specifications. B.S.A., C.S.A., D.I.N., I.S.O., J.I.S., or other appropriate specifications.

STATEMENT OF THE
AMERICAN PAPER INSTITUTE, INC.
TO THE
SENATE FINANCE COMMITTEE
FOR THE RECORD OF ITS HEARINGS
OF
APRIL 7 AND 8, 1987

The American Paper Institute, Inc. (API) is the national trade association representing U.S. companies that account for over 90% of U.S. production of pulp, paper and paperboard. In 1986 shipments of the paper and allied products industry exceeded $109 billion.

Among the many legislative proposals that the Committee is reviewing in these hearings on trade legislation, including provision in S 490, S 539 and HR 3, are two matters on which API would like to comment: The implementation of Presidential negotiating authority, in S 490 and S 539, and the "Mica Amendment" on pre-shipment inspections of U.S. exports, in HR 3. How these matters are resolved in final trade legislation that is enacted this year can have either a very positive or a negative effect on the paper industry's competitiveness and export efforts.

The Provision and Implementation of Presidential Negotiating Authority for Bilateral and Multilateral Negotiations.

We applaud the Congressional interest in the formulation of trade policy as an equal partner, but we also believe that the present language of the S490 does not afford the President the needed degree of flexibility. **The paper industry urges the Committee to reach a compromise with the Administration that would provide Congress with a partnership role in the trade policy and trade negotiating process while ensuring that the President has the flexibility he needs to achieve good agreements.**

The success of the current round of Multilateral Trade Negotiations (MTN) under the General Agreement on Tariffs and Trade (GATT) is particularly important to the paper industry, not only in terms of expanding opportunities for our direct exports, but in improving the conditions -- and climate -- for international trade, within which the paper industry operates.

The overall climate significantly affects the industry's domestic business because of the importance of "indirect" exports to the industry's economic health. "Indirect" exports are domestic sales of paper and paperboard that occur because of export demand for the products of another industry. Packaging for products that enter international commerce, paper used in export documentation, and components such as filters that leave the country as part of exported products are examples of indirect exports.

The paper industry strongly supports efforts to promote free but equitable two-way trade. For this reason, API fully endorses the objectives for the MTN and bilateral negotiations that are detailed in Section 105 of S 490. The objectives of particular importance to our industry include:

- further reducing tariffs and non-tariff barriers in foreign markets **(for our industry, reduction of tariffs remains a very important objective)**;
- revising international rules and defining and disciplining the use of such unfair trade practices as subsidies, dumping and export targeting;
- requiring less developed countries (LDCs) that are making economic progress to take on greater responsibilities under the GATT;

- strengthening the international trading system itself by revising the GATT dispute settlement process, improving compliance with GATT Codes, and expanding the list of signatories to those Codes;

- convincing countries that peg their currencies to the U.S. dollar to adjust exchange rates to reflect economic fundamentals.

We are concerned, however, that the implementation provisions in S 490 are so restrictive of the President's negotiating authority that the achievement of these goals in the MTN may be seriously imperiled.

The bill's delayed access to "fast track" procedures and Congressional approval requirements would deny the President the flexibility he will need in the negotiations in order to win difficult concessions from our trading partners. There is a real risk as well that the Uruguay Round, itself, could founder, if trading partners are asked to negotiate without any guarantee that agreements reached at the table will not be unraveled and rewritten by the U.S. Congress after the fact. Especially damaging would be a requirement that the Administration publicly spell out specific negotiating objectives. This could force the U.S. to tip its hand in advance to our trading partners, seriously compromising effective negotiating strategy.

Negotiating flexibility will be especially essential in the area of tariff negotiations. While tariffs have been greatly reduced in previous rounds of GATT negotiations, tariffs on paper industry products in many countries remain high, hampering our export competitiveness. We share the Administration's concern -- expressed in Ambassador Yeutter's testimony before this Committee on April 2 -- that "requiring a Congressional vote on tariff reductions is likely to mean much less trade liberalization and therefore much less for U.S. exporters." We support the Administration's request for ten-year proclamation authority for tariffs.

API supports the desire of Congress to be more closely consulted by the Administration in the development of overall national trade policy as it relates to the trade negotiations. We believe that the Administration's trade bill makes a genuine commitment to a closer partnership with Congress and provides the basis for a compromise that could meet the needs of these two branches of our Government.

We also have several suggestions that would improve input from the private sector in the negotiations. We believe that the private sector consultation process can and should be improved and closer liaison between Congress and the advisory committees should be sought. For example, Congressional representatives to the negotiations should be encouraged to maintain close liaison with the private sector advisors.

Regarding appointments to the advisory committees, we acknowledge the positive intent of Section 106(c) of S 490, but would urge that any consideration of political affiliation of committee members be applied only to members of advisory committees dealing with overall policy issues, like the Advisory Committee on Trade Negotiations (ACTN) or the President's Export Council (PEC). Appointments to the Industry Sector Advisory Committees (ISACs) and Industry (or Agriculture) Functional Advisory Committees (IFACs) should be based solely on industry or technical expertise and not on political party affiliation.

Other improvements to strengthen the advisory committee process would include greater and earlier declassification of matters under discussion in ISACs, for example, so that ISAC members can get better input from other companies in the industry about issues on which the Committee is advising the government.

The "Mica Amendment" in HR 3

The second matter we wish to comment on concerns the use of private inspection companies by a growing number of developing countries to perform quality and quantity pre-shipment inspections of U.S. exports and to review prices in exporters' contracts with customers in those countries.

This issue has been dealt with unsatisfactorily, in our judgment, in the House bill, HR 3. The version of the "Mica Amendment" that was adopted by the House Foreign Affairs Committee last month and incorporated in HR 3 would institute a certification procedure for inspection companies and authorize the Commerce Department to issue regulations regarding their activities. However, "Mica 2" (as the amendment is popularly known) inadequately addresses several key concerns of the paper industry -- especially in the area of pricing interference. As it is now written, it would actually put a stamp of approval on the inspection companies' present activities.

API supported adoption of an earlier version of the amendment (known as "Mica 1"), which collapsed under heavy pressure from the inspection companies and several developing countries.

Mica 1 would provide for strong regulation of inspection companies. It would restrict their interference in companies' pricing decisions to those transactions where there is reason to suspect customs fraud. It would require the companies to provide evidence of their competence to do quality inspections of specific products. And, it would provide for an appeals process to challenge inspectors' decisions, with penalties for the inspection companies' failure to follow through on Commerce Department determinations in appeal cases.

In the Senate, this issue is likely to come before the Banking Committee. **However, in view of your Committee's all-encompassing responsibilities in the trade field, we should like to make you aware of the serious obstacle to U.S. export efforts posed by the inspection programs and the need for strong legislation to regulate the activities of the inspection companies in order to minimize their disruption of U.S. trade.**

The paper industry is directly impacted by the inspections. The problem has become especially severe in the past 18 months as more and more developing countries, primarily in Central and Latin America and Africa, have engaged the private firms. There are now 26 countries using them. The inspections have seriously disrupted our industry's exports to the many countries using the private inspectors and have begun to chill interest in doing business in several of these countries.

Major impediments result from uncertainties surrounding price reviews, serious delays of shipments, and disruptions of mill operations when quantity and quality inspections are not carried out during scheduled times and thus require special handling. Our members are particularly disturbed by the price review activities of the inspection companies. They believe that all too frequently decisions made by the inspection companies are arbitrary and bear little relationship to prevailing commercial realties; they amount to coercive interference in private transactions; and they have a strong potential for anti-competitive effects.

API and its member companies are sympathetic to the needs of some developing countries to control the use of scarce foreign exchange reserves and to assure that importers, through fraud, do not avoid payment of legitimate duties. These are valid concerns which we believe can be met through government policies and actions without impeding international transactions or nullifying legitimate contracts.

This committee is, no doubt, aware that the U.S. Trade Representative and the International Trade Commission are working on this problem. A Section 301 case brought last Fall by a group of Florida exporters and freight forwarders against five Latin American countries was withdrawn to give the U.S.T.R. an opportunity to pursue bilateral negotiations with those five countries and more than 20 others using the private inspectors. The ITC has undertaken an investigation of the impact of the pre-shipment inspections on U.S. commerce. A series of hearings have been held by the ITC, and a report is expected from the Commission next month. API and its members are assisting the ITC in its investigation to document the seriousness of this problem. We believe that the ITC's findings will confirm our concerns.

The U.S.T.R.'s Office continues to hold talks with several developing countries about the problem. So far, we understand, however, there has been little success on this front.

In addition to bilateral efforts, API continues to support multilateral efforts in the MTN and in the Customs Cooperation Council, in bringing more developing countries in as signatories to the GATT Customs Valuation Code and in helping them to find ways to prevent customs fraud.

In the last analysis, however, many of the activities of the inspection companies should not be permitted to continue -- whether they are undertaken at the behest of other governments or on the inspection firms' own initiative.

Therefore, API urges the Congress to include in the trade bill regulatory provisions of the "Mica 1" type to address U.S. exporters' needs.

STATEMENT ON BEHALF OF AMERICAN WIRE PRODUCERS ASSOCIATION

BY ROBERT T. CHANCLER, MANAGING DIRECTOR

HEARINGS ON MAJOR TRADE BILLS
BEFORE THE COMMITTEE ON FINANCE,
UNITED STATES SENATE

April 21, 1987

The American Wire Producers Association is a national trade organization which represents independent American-owned and -operated manufacturers of carbon, alloy and stainless steel wire and wire products. Our membership also includes integrated and mini-mill producers of steel wire rod, wire drawers related to domestic rod producers, wire drawers related to foreign steel companies, and suppliers of machinery and other equipment to our industry. Member companies of the Association operate more than 135 plants in 30 states, and they employ 25,000 American workers. Our members are efficient producers with modern facilities and a productive labor force. They supply more than 60 percent of the domestic market for steel wire and wire products, including round and flat wire, barbed wire, threaded bars, welded wire fabric, wire rope and strand, nails, chain, coat hangers, concrete reinforcing mesh, and chain link fence.

The international steel market is a highly competitive environment, and our members compete effectively with overseas producers of wire and wire products. We have in the past opposed artificial government-imposed restrictions on the free and fair exchange of steel products across international boundaries. However, in September 1984, President Reagan announced the establishment of a government policy for the steel industry which included as its centerpiece the negotiation of voluntary restraint arrangements (VRA's) with steel-exporting countries. Moreover, many foreign producers and their governments continue to abuse the international trading system through unfair pricing practices and subsidization. Thus, our Association respectfully urges this Committee to correct the deficiencies in the President's Steel Import Program and to prohibit the continuation of certain unfair practices by our trading partners.

There can be no question that the omission of certain major steel-exporting countries from VRA coverage -- particularly Canada, Turkey, Taiwan, Sweden and Argentina -- has undermined the integrity and effectiveness of the President's Steel Import Program. At the inception of this program in the fall of 1984, the United States Trade Representative (USTR) observed that the domestic steel industry confronted an "unprecedented and unacceptable" surge of imported steel products as the result of (a) the diversion of steel products to the United States market due to quotas and import restraints in other countries and (b) massive unfair trade practices by overseas producers, including predatory pricing and subsidization. Accordingly, the President instructed the USTR to negotiate VRA's with countries whose exports of steel products had increased significantly to the detriment of the national economy. The President also directed the USTR to negotiate additional VRA's to control new surges in imports resulting from subsidization, dumping, or other unfair or restrictive practices.

While steel imports from VRA countries have generally declined since 1984, imports of steel and steel products from non-VRA countries have increased sharply. Exporters from many non-VRA countries have exploited the President's Program by capturing market share relinquished by VRA countries and by expanding the range and volume of their steel shipments to the United States. Many of these countries are also subject to final dumping and/or countervailing duty orders on steel products, clear evidence of their willingness to engage in unfair trade practices in order to establish or expand their share of the U.S. market.

For example, Canada exported 3,203,000 net tons of basic steel mill products to the United States during 1986, an increase of 11.7 percent over the previous year. Steel shipments from Taiwan surged 120.1 percent during the same period -- from 219,000 net tons to 482,000 net tons. Turkey exported 44,000 net tons of steel products to the United States in 1984, 70,000 net tons in 1985, and 153,000 net tons in 1986. Altogether, imports of steel mill products from non-VRA countries increased by 12.8 percent from 1985 to 1986, whereas imports from VRA countries declined by 21.1 percent during the same period.

The exploitation of the President's Steel Import Program by non-VRA countries has been even more pronounced in the categories of steel wire and wire products. Canadian shipments of drawn wire surged by 18.6 percent from 177,000 net tons during 1985 to 210,000 net tons during 1986. At the same time, Canadian exports of nails to the United States increased by 24.1 percent from 83,000 net tons to 103,000 net tons. The surge of imports of wire and wire products has been even more extreme in the western region of the United States where imports of drawn wire, nails and wire products have risen by 57.9 percent from 1985 to 1986 and by 103.2 percent from 1984 to 1986.

Turkey and Taiwan are other examples of countries which have exploited their non-VRA status. Turkish shipments of nails surged from 1,000 net tons during 1985 to 23,000 net tons during 1986 -- a staggering increase of more than 2,200 percent. At the same time, Taiwan increased its exports of drawn wire by 60.7 percent and of nails by 349.3 percent. While Sweden and Argentina have recently moderated their steel exports to the United States, both countries remain significant suppliers, and Sweden continues to ship large quantities of wire, particularly high-value stainless steel wire, to the United States.

Clearly, the President's Steel Import Program was not designed merely to shift market share from one foreign producer to another. Accordingly, we urge the Committee to adopt legislation which would close these loopholes in the President's Program.

We have prepared a proposal, attached as Exhibit A, which would complete the implementation of the President's Steel Import Program by eliminating the distortions caused by the omission of certain steel-exporting countries. Our proposal covers the major non-VRA countries which export more than 100,000 net tons of steel and steel products to the United States annually. This threshold figure avoids the administrative burden of negotiating VRA's with small or marginal steel-exporting countries whose shipments nevertheless remain subject to existing unfair trade laws. Moreover, Section 195 of the Trade and International Economic Policy Reform Act of 1987 (H.R. 3) would prevent the exploitation of the President's Program by such countries. Finally, the proposal extends only to those non-VRA countries which have already engaged in unfair trade or pricing practices through subsidizing and/or dumping steel imports in the U.S. market. Because the practices of these countries are no less damaging than those of the VRA countries, there is no justification for rewarding them with a greater share of the U.S. market at the expense of the domestic industry.

As noted above, our Association strongly supports measures to prevent the diversion of steel products from VRA countries to non-VRA countries where the products are further processed and re-exported to the United States. This problem has reached crisis proportions with respect to imports of wire and wire products from Canada. As Exhibits B and C demonstrate, following the adoption of the President's Steel Import Program, western Canadian wire producers have imported sharply increasing quantities of wire rod from VRA countries for conversion into wire and wire products which are subsequently exported to the United States. From 1984 to 1986, western Canadian imports of wire rod from VRA sources increased by 31.8 percent from 132,000 net tons to 174,000 net tons. At the same time exports of wire and wire products from western Canada into the western region of the United States increased by 103.2 percent. Thus, Canada has become a major conduit for the conversion of VRA steel into products for re-exportation into the United States.

Our Association endorses Section 195 of H.R. 3 which would prevent such diversion of VRA-origin steel into the United States via non-VRA processors. We believe that enactment of this provision is essential in order to prevent further undermining of the President's Program and further distortions in the domestic steel market.

The members of our Association have a record of competing successfully in the international marketplace. Our segment of the domestic steel industry has grown to service 60 percent of America's demand for steel wire and wire products. We are confident that we can continue to compete effectively in a free and fair trading environment. By enacting legislation which would close the loopholes in the President's Steel Import Program, the Congress can restore the basic conditions in which competitive producers can prosper by offering freely and fairly traded goods to the marketplace.

Respectfully submitted,

Robert T. Chancler
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American Wire Producers Association
1101 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036

EXHIBIT A

A BILL

To amend the Steel Import Stabilization Act to eliminate distortions of trade caused by the omission of certain steel-exporting countries from the President's steel import program.

> Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

That Section 805 of the Steel Import Stabilization Act (Public Law 98-573) is amended as follows:

(1) By redesignating subsection (c) as subsection (d); and

(2) By inserting after subsection (b) the following new subsection:

"(c)(1) The United States Trade Representative shall consult with the government of each of certain steel-exporting countries as defined in paragraph (2) of this subsection for the purpose of negotiating a bilateral arrangement as defined in Section 804(1). If such consultations do not result in the successful negotiation of an arrangement within ninety (90) days of the date of enactment of this subsection, the Secretary of the Treasury, in exercising his authority under subsection (d) of this section, shall restrict entry into the United States of the categories of steel products, as defined in paragraph (3) of this subsection, from such country, beginning in calender year 1987, to no more than seventy (70) percent of the percentages of apparent domestic supply in each category achieved by steel products imported from such country in the four calendar quarters immediately preceding October 1, 1984.

"(2) The certain steel-exporting countries referred to in paragraph (1) include any country which (a) exported, directly or indirectly, 100,000 net tons or more of the categories of steel products defined in paragraph (3) of this subsection during calendar year 1986 or any subsequent calendar year, and (b) is subject to an antidumping and/or countervailing duty order against one or more of the categories of steel products defined in paragraph (3) of this subsection.

"(3) The categories of steel products referred to in paragraphs (1) and (2) are the same categories of steel products enumerated in and governed by the Arrangement Concerning Trade in Certain Steel Products between the European Economic Community and the Government of the United States, as amended, and the Arrangement Concerning Exports of Pipes and Tubes between the European Economic Community and the Government of the United States, as amended.

"(4) The duration of any bilateral arrangement or other restriction pursuant to paragraph (1) of this subsection shall be the same as that of the bilateral arrangements which have already been entered into pursuant to the President's steel import program.

EXHIBIT B

WESTERN CANADA
EXPORTS OF WIRE AND WIRE PRODUCTS TO THE UNITED STATES THROUGH THE PORT OF BLAINE, WASHINGTON

Product	1983	1984	1985	1986
Drawn Wire	14,460	25,378	23,646	29,305
Nails	12,949	9,761	20,628	37,692
Barbed Wire	42	49	44	37
Galvanized Wire Fence	132	496	406	496
Wire Strand	2,073	2,305	2,898	6,053
Welded Fabric	561	2,427	4,389	8,537
TOTAL	30,217	40,416	52,011	82,120

Note: All figures in net tons.

Source: U.S. Department of Commerce

EXHIBIT C

WESTERN CANADA
IMPORTS OF STEEL WIRE ROD

Imports in Metric Tonnes

VRA Countries	1983	1984	1985	1986
Australia	2,169	--	--	--
Belgium	1,070	--	--	--
Brazil*	32,007	32,492	15,406	31,694
Czechoslovakia*	--	--	--	2,228
France	10,640	19,036	34,099	37,024
Korea	1,110	--	2,754	2,685
Japan	44,749	33,706	39,545	37,255
Mexico*	5,638	17,835	3,534	16,386
Spain*	--	11,013	22,345	28,654
Venezuela*	3,068	5,507	5,739	1,668
West Germany	--	--	8,696	83
Subtotal	100,451	119,589	132,118	157,677
Subtotal (net tons)	110,727	131,823	145,634	173,807
Non-VRA Countries				
Argentina**	1,199	5,292	--	--
Singapore	--	--	3,407	--
Trinidad & Tobago**	--	--	--	16,809
U.S.A.	461	1,777	1,512	418
Subtotal	1,660	7,069	4,919	17,227
Subtotal (net tons)	1,830	7,792	5,422	18,989
TOTAL	102,111	126,658	137,037	174,904
TOTAL (net tons)	112,557	139,615	151,056	192,797

* The U.S. antidumping and/or countervailing duty proceedings against wire rod from these countries were rescinded as a condition of the voluntary restraint arrangements which these countries signed with the United States Government.

** There are U.S. antidumping and/or countervailing duty orders against wire rod from Argentina and Trinidad and Tobago.

Source: Canadian Import Statistics

Written Submission
to the
Committee on Finance
on Implications for Latin America
# of Omnibus Trade Legislation

by

Thomas L. Hughes
President

Association of American
Chambers of Commerce in Latin America

INTRODUCTION

The Association of American Chambers of Commerce in Latin America (AACCLA) is pleased that the Committee on Finance has given our membership this opportunity to comment on, and compare the pending major trade bills. The twenty-one American Chambers of Commerce (AmChams) located in this hemisphere collectively represent 18,000 individuals and companies engaged in trade and investment between the U.S. and Latin America. Our overriding objective in commenting on prospective trade legislation is to assure that Congrees acts in a manner which fully reflects the commitment of the United States to a more prosperous hemisphere, and one in which democracy and free enterprise can flourish.

New trade legislation should serve one master: To improve the competitive position of U.S. business in international markets. We continue to believe that this objective can best be advanced by working for a more open and fair international trading system. Naturally, our trading partners must be equally committed to this goal, and must demonstrate their commitment by opening their markets, and avoiding resort to protectionist actions which put competitive U.S. products at an unfair disadvantage.

AACCLA supports strong action by the U.S. Government when the export opportunities of U.S. companies are unfairly impeded by our trading partners. We would prefer to rely on a prudent use of Presidential power to restore these opportunities to American business, than to be irrevocably drawn into retaliation which may not be in the national economic interest.

The Senate bill contains a number of provisions directed at reforming existing trade law to counter foreign unfair trade practices. There is particular emphasis on mandatory responses by the Executive to foreign barriers. The Senate bill would also require greater direct involvement of the Congress in management of the U.S. trade agreements program.

The House bill also seeks to improve the effectiveness of U.S. statutes on unfair practices, but the House appears to be more inclined to allow the President to use discretionary authority to resolve the problems of U.S. business, than to mandate retaliation.

The Administration bill emphasizes expanded and enhanced negotiating authorities, rather than reliance on tough and inflexible trade statutes.

AACCLA SUPPORTS BROAD PRESIDENTIAL AUTHORITY TO ACCELERATE NEGOTIATIONS IN THE URUGUAY ROUND

The successful launching of a new round of multilateral trade negotiations was of utmost priority for AACCLA, and the inclusion of such new areas as intellectual property rights, trade in services, trade-related investment barriers, and trade in high-technology products assures that the Uruguay Round will have continuing support from our membership. We are therefore quite concerned that the President have negotiating authority adequate to the tasks which lie ahead.

We believe that the type of negotiating authority provided the President for the Tokyo Round remains appropriate. It required close consultation with the U.S. private sector and the Congress; provided discretion in reducing tariffs up to set limits, and provided for expedited Congressional approval of agreements. This authority left know doubt that the United States wanted serious negotiations.

The Senate bill imposes restrictions and conditions which we believe would encumber the President's authority to such a degree that the overall success of the negotiating process is put in jeopardy. We believe that these restrictions and conditions could mislead our trading partners in Latin America into thinking that the United States entered the negotiations without the full confidence of the American business community. This would make it impossible for the President to conclude vital new agreements.

We oppose these provisions in the Senate bill, and ask that the Senate consider the more constructive approach provided for in the bill reported by the Ways and Means Committee.

U.S. TRADE LEGISLATION SHOULD NOT REQUIRE RETALIATION IN VIOLATION OF GATT OBLIGATIONS

We believe that progress made toward improved dispute settlement and consultative procedures to solve trade conflicts is jeopardized by proposals which mandate or make likely Presidential action which may be in violation of the GATT or other bilateral trade agreements. We therefore oppose those provisions in S. 490 relating to operation of Section 301 which could place us in violation of our GATT obligations.

We see very serious risk in the manner that S. 490 treats retaliation against "unreasonable" or "discriminatory" practices, in that the President would be under considerable pressure to retaliate against measures which, in most cases, would not be violative of U.S. trade agreements rights.

AACCLA opposes provisions in the Senate bill which require the President to retaliate based on a unilateral judgment that an action of another country violates GATT rules. This sets a dangerous precedent which could result in backsliding by our trading partners on the issue of dispute settlement and consultative mechanisms in GATT and elsewhere. We do, however, agree with the intent of the Senate provision which shortens the time for resolution of a Section 301 case.

We do not believe that the objectives of Section 301 are served by mandating negotiations with countries found to be maintaining a "consistent pattern" of unfair practices ("adversarial trade"). We believe that this provision could work to undermine future use of Section 301 to resolve disputes on a case-by-case basis.

In defining the scope of actionable practices, we oppose inclusion of workers' rights in both the Senate bill and H.R. 3. We do not believe that this is an area lending itself to dispute settlement in the context of Section 301. Again, we see the possibility of U.S. retaliation in violation of our GATT obligations.

COUNTRIES SHOULD NOT BE SINGLED OUT FOR PUNITIVE ACTION

The most objectionable suggestion for change in Section 301 is the proposal before the House to require unilateral Presidential action against countries with allegedly persistent trade surpluses. Such provisions violate GATT, do not allow the forces of competitive advantage to play a role, and do not recognize the responsibility of the U.S. to maintain its own competitive edge. Even though countries with balance of payments difficulties would be subject to less stringent countermeasures, they are still covered by the basic provisions. Any attempt to correct negative balance-of-trade situations through retaliation not sanctioned by the GATT could easily lead to retaliation against U.S. exports. We are pleased to note that both the Senate and the Administration bills under consideration do not contain anything like the House proposal.

PROPOSALS FOR NEW CATEGORIES OF UNFAIR TRADE PRACTICES ARE NOT GATT CONSISTENT

S. 490 and H.R. 3 as reported contain rules on so-called diversionary dumping. We do not believe these proposals are administratively workable, and, if enacted, they are likely to prompt a severe reaction from GATT members who could credibly claim that these rules are not GATT consistent.

We do believe that this is an issue which must be addressed in the Uruguay Round, and we will urge Latin American officials to work with the United States in Geneva to seek a solution to this increasingly dangerous trade irritant.

IMPORT RELIEF SHOULD REMAIN A PRESIDENTIAL PREROGATIVE

The Senate bill mandates that the President provide relief if the USITC finding is unanimous. We oppose this inflexible approach to Section 201 actions, and believe the President should in all circumstances have the ability to deny relief which is not in the "national economic interest"

EMERGENCY IMPORT RELIEF SHOULD BE BASED ON A FINDING OF INJURY

We are concerned by proposals to allow for provisional relief in escape clause cases relating to perishable commodities.

Under the House and Senate bills, escape clause relief on these products could be imposed within a short period of time after a complaint was filed, without a USITC injury finding, and before consideration of relevant factors normally required in escape clause proceedings.

Although these proposals are modeled after provisions in the CBI and the U.S.-Israel FTA, the current proposals are much more dangerous. In the CBI and U.S.-Israel FTA, emergency relief for perishables is limited to restoration of MFN tariff rates. The new legislative proposals give authority to impose quantitative restraints. We believe the Congress should be far more cautious in making import relief measures possible without a finding of injury by the USITC.

AACCLA SUPPORTS CONGRESSIONAL PROPOSALS TO IMPROVE U.S. EXPORT COMPETITIVENESS

Finally, we believe that U.S. exports are hindered in several ways. The three most important relate to:

1. The need for modifications to the Foreign Corrupt Practices Act (FCPA). We oppose corruption, but the FCPA places unrealistically high standards on U.S. business, resulting in a competitive disadvantage relative to foreign business. The current law is unclear, leaving American companies open to prosecution depending upon judicial interpretation. AACCLA supports congressional efforts to clarify ambiguities in the current law. At the same time, we would like to see corrupt practices addressed in a multilateral context, with emphasis on finding ways for enforcing realistic standards and providing guidelines for actions to be taken against those who solicit payments as well as those who make them.

2. The need to combat foreign export credit subsidies. We support the concept of an export "war chest" to enable U.S. exporters to compete in situations where foreign governments have provided excessive export credit subsidies.

3. The need for systematic review of, and modifications to U.S. export control laws.

0037C

STATEMENT OF
GEORGE C. NIELD, PRESIDENT
AUTOMOBILE IMPORTERS OF AMERICA, INC.
SUBMITTED TO THE
SENATE FINANCE COMMITTEE
ON PROPOSED AMENDMENTS TO THE TRADE LAWS

April 8, 1987

This statement is submitted by the Automobile Importers of America, Inc. (AIA), an association of companies that make and import vehicles for sale in the United States. A list of AIA's members is attached to this statement.

AIA's statement expresses opposition to a number of proposals being considered in the Congress, including: two amendments to "section 301", the market access statute (sections 301-306 of the Trade Act of 1974); five amendments to the escape clause (sections 201-203 of the Trade Act of 1974); a provision which would discourage investment in the United States; and a resolution which fails to recognize the obligations of U.S. auto parts producers in assessing the succcess of current trade talks. These proposals would: (a) drive up the cost of products to consumers; (b) imperil the international trading system that has contributed to America's and the world's economic growth; and (c) reduce the opportunities for promotion of U.S. exports.

The proposed amendments discussed in the statement would do the following:

Section 301

1. Impose quotas on imports from countries with allegedly excessive bilateral trade surpluses with the United States. (H.R. 3)
2. Reduce the President's discretion in order to make import restrictions more automatic in certain types of section 301 cases. (S. 490 and H.R. 3)

Section 201

1. Transfer the authority to grant import relief from the President to the U.S. Trade Representative (USTR). (H.R. 3)
2. Authorize provisional import relief before the decision of the U.S. International Trade Commission (ITC). (S. 490 and H.R. 3)
3. Require the granting of import relief if most or all of the members of the ITC recommend such relief. (S. 490)
4. Prohibit the ITC from treating as a single cause of injury declining demand associated with a recession. (S. 539 and H.R. 3)
5. Authorize the auctioning of escape clause quotas. (H.R. 3)

Other

1. Require the registration and disclosure of foreign investment in the United States. (H.R. 3)
2. Require that the success of the current U.S.-Japan auto parts MOSS talks be measured by significantly increased

sales without recognition of the obligation of U.S. auto parts producers to sell competitively priced, quality products according to a timely delivery schedule. (H.R. 3)

These amendments are found, as indicated above, in S. 490, introduced by Senator Bentsen and others; in H.R. 3, as ordered reported from the House Ways and Means and Energy and Commerce Committees; and in S. 539 (and H.R. 1155), the Administration's trade bill. Fundamentally, these proposals would restrict, not expand, trade.

For the reasons expressed below, AIA believes that the amendments to sections 301 and 201 are fundamentally inconsistent with the purposes of these statutes and the maintenance of a liberal trade policy. The foreign investment registration and disclosure requirements would seriously disrupt and discourage the flow of foreign portfolio investment capital to the United States. The auto parts resolution fails to recognize the obligations of U.S. auto parts producers. Adoption of these proposals would render any trade bill distinctly protectionist and contrary to the national interest.

A. Section 301

Section 301 of the Trade Act of 1974 is a market access statute which provides the President with the authority to attempt to persuade foreign countries to eliminate unfair acts, practices, and policies and to bring foreign practices into line with international agreements. Of the major U.S. trade statutes, section 301 is unique in that it is specifically aimed at providing increased market access abroad for U.S. exports. The intent of section 301 is to eliminate unfair trade barriers and practices by negotiation rather than retaliation. The vast majority of concluded 301 cases in the last 12 years have been terminated without resorting to retaliation, at least in part because retaliation represents the failure, not the success, of a section 301 case.

While the overall goals of section 301 are laudatory, it could be used improperly if its retaliatory provisions are made mandatory or too automatic. In such circumstances, section 301 could not only fail to achieve its objectives, but tend to be counter-productive. Specifically, with respect to retaliation, whenever any increased duties or import restrictions are used to address these unfair acts, practices and/or policies, there is likely to be an adverse impact on U.S. consumers and perhaps U.S. exporters in the form of higher prices, more limited choice and/or counter-retaliation.

Of course, there are some improvements that could be made to section 301, e.g., the imposition of reasonable negotiation deadlines (ideally, corresponding to GATT dispute settlement proceeding deadlines). However, we are deeply concerned by, and oppose, provisions contained in S. 490 and H.R. 3 which could make retaliation mandatory or more automatic in some circumstances. We believe that S. 490 and H.R. 3 would largely transform section 301 from a negotiation to a retaliation statute.

1. Retaliation based on bilateral trade balances.

The most objectionable feature of H.R. 3 as it pertains to section 301 is the provision which would require retaliation against countries such as West Germany and Japan based principally on their allegedly unwarranted bilateral trade surpluses with the United States and their overall trade surpluses. S. 490 and the Administration bill do not contain this provision. Although this feature was amended during markup by the House Ways and Means Trade Subcommittee, it remains fundamentally flawed in the harm it may precipitate for America's economy by its discriminatory application as to countries with allegedly excessive trade surpluses.

This "trade surplus" proposal simply does not take into account the fact that the overwhelming majority of all internationally-traded goods are traded in a commercially fair way. Only the minority are vulnerable to attack under such statutes as the dumping and countervailing duty laws.

Economists generally agree that the trade deficit is predominantly the result of the budget deficit and the misaligned dollar. As the dollar declines in value, imports have and will become more expensive and exports cheaper. It is therefore the budget and monetary areas that demand the closest attention.

The "trade surplus" proposal would reap severely destructive consequences. It would bring about a contraction of imports and exports. If the targeted countries sought to comply with its targets, they would almost certainly act to restrict their exports to the United States since the trade surplus reductions could not realistically be expected to be achieved within the proposal's short time requirements and since any significant increase in U.S. imports into that country would relate primarily to the private sector, over which foreign governments have less control than over the volume of their exports. Moreover, if U.S. retaliation took the form of quotas, as it might, other countries would be very likely to retaliate by taking even fewer U.S. exports. The mechanism of this "trade surplus" proposal is therefore calculated not to expand but to constrict and reduce international trade. All countries, including the United States, would suffer.

The "trade surplus" proposal turns its back upon the international collaboration that has brought such an expansion in economic activity throughout the world since World War II. In particular, the successive rounds of GATT negotiations have liberalized trade and allowed it to grow enormously since the late 1940s. This misguided proposal would severely impair that process and put a chilling effect on U.S. efforts to mount a new round of multilateral trade negotiations.

2. Mandatory retaliation in section 301 cases.

Provisions in S. 490 require mandatory retaliation after certain findings by USTR, subject to certain very limited exceptions (including, most notably, an exception based only partially on consideration of the national economic interest). Provisions in H.R. 3 require mandatory retaliation against a trading partner if, among other things, that country engaged in an act, policy or practice which unjustifiably burdens or restricts U.S. commerce, subject to certain exceptions (including a restricted consideration of U.S. economic interests).

Section 301 has worked well and it should continue to be used in appropriate cases. However, amendments to section 301 which mandate or dictate the terms of possible retaliation, particularly when only narrow or limited waviers based on U.S. economic interests are available, are not beneficial. Existing Presidential authority is sufficiently broad to deal with cases where retaliation is the only alternative. Such proposals would lead to a reduction in the Administration's flexibility, thereby reducing the prospects of successful section 301 negotiations. Moreover, such proposals lose sight of the fact that the President must consider a broad spectrum of questions and interests, including such issues as whether the particular act, policy or practice has a U.S. counterpart. More important, such proposals lead in the direction of transforming section 301 from a negotiation statute to a retaliation statute.

B. Section 201 ("Escape Clause")

1. Transfer of import-relief authority from President to the USTR in escape clause cases.

H.R. 3 would transfer to the USTR all the authority now vested in the President by the escape clause. In particular, this would include the critical determination of whether to grant import relief.

The escape clause now directs the President to base his determination of whether to grant import relief on the national economic interest. That interest includes, but is not limited to, nine statutory criteria that are different from those required to be considered by the ITC. The President, for example, must consider the effectiveness of import relief as a means to promote the adjustment of the domestic industry, the effect of such relief on consumers and the necessity to provide compensation. The latter requires a consideration of the impact on other sectors of the economy of either lower import duties on other products entering the United States or on increased limits overseas on U.S. exports. In practice, the President's decisions have been guided not so much by the specific criteria in the statute as by the overriding standard that he must apply: the national economic interest. This term necessarily embraces a wide range of factors, both domestic and international.

The USTR has neither the authority nor, as a consequence, the expertise to determine what is or is not in the national economic interest. The President is capable of taking into account the broad range of considerations; the USTR, on the other hand, deals only with trade issues and has no expertise to evaluate the many other facets of the national economic interest.

In short, such a transfer of authority would be likely to precipitate ill-considered import restrictions, with all of the adverse consequences of such restrictions.

2. Provisional import relief before ITC decision.

S. 490 would add a new provision to the escape clause that would require the President to grant provisional import relief before the ITC's decision, if he made a preliminary determination that "critical circumstances" existed. The provisional import relief could take any form that final relief could take. The proposal provides that "critical circumstances" exist

> if a significant increase in imports (actual or relative to domestic production) over a short period of time has led to circumstances in which a delay in the imposition of relief would cause damage to the domestic industry that would be difficult to remedy at the time relief could be provided under section 205. (Emphasis added.)

The underlined words assure that any determination of "critical circumstances" would be subjective and therefore readily open to considerations unrelated to the merits of a given case. This subjectivity would afford too much room for accommodations to protectionist pressures.

Moreover, if the President decided upon provisional import relief, it would prejudice the ITC's decision. The ITC would no longer be playing an independent role but would instead have to justify either agreeing or disagreeing with the President's determination. As a result, the separation of the ITC from the Executive Branch, which should be highly valued, would be significantly compromised.

H.R. 3 would add a similar provision. If the ITC finds that critical circumstances exist, it must order immediate suspension of liquidation of all entries of the merchandise under investigation, and may order the posting of a bond or cash deposit. Again, the vagueness of H.R. 3's definition of "critical circumstances" would render this new authority subject to serious abuse in that any determination of "critical circumstances" would be subjective and therefore open to protectionist pressures.

3. Mandatory import relief if most or all of the ITC members recommend such relief.

S. 490 would require the President to grant the import relief recommended by the ITC in escape clause cases if the ITC decision were unanimous. The President could depart from the ITC's recommendation only with Congressional approval. The bill would also require the President to grant the import relief recommended by the ITC if the ITC decision were by majority vote, unless he decided that import relief would be detrimental to the national security or would cause serious injury to the domestic industry.

These amendments disregard the fundamental purpose of the escape clause, which is to provide temporary import relief to a domestic industry only if it is consistent with the national economic interest. The escape clause, unlike the antidumping or countervailing duty statutes, for example, is concerned with fairly-traded imports. For that reason, if escape clause relief is granted, the United States must pay compensation to, or suffer retaliation by, the affected countries. Either action has a significant impact upon other U.S. industries.

It is therefore domestically unsound and internationally dangerous to so straight-jacket the President and deprive him of the vital discretion to determine what is in the national economic interest. This is particularly true given the narrow decision that the ITC is required to make. Its decision cannot, as a matter of law, take into account a range of considerations bearing upon domestic and international trade and economic policy.

4. Barring ITC from treating as a single cause declining demand associated with a recession.

S. 539 would add a new provision to the escape clause, reading as follows:

> For purposes of determining whether an increase in imports (either actual or relative to domestic production) is a substantial cause of serious injury to a domestic industry or a threat thereof, the Commission should consider the condition of the industry over the course of the relevant business cycle and shall not aggregate the causes of declining demand associated with a recession or economic downturn into a single cause of serious injury.

H.R. 3 contains substantially the same provision. This amendment is objectionable for the following three reasons.

First, it prevents the ITC from carrying out its essential role. The escape clause now requires the ITC to take into account all economic factors it deems relevant in making its decisions.

Since the escape clause was first enacted in 1951, the ITC has been able to make its analyses in an objective and impartial manner. This amendment would arbitrarily tell the ITC that it could not take into account declining demand associated with a recession. To limit the ITC in this manner would deprive it of the ability to make its decision based upon the fullest and most comprehensive review of all the relevant factors. The amendment would severely limit this discretion and force the ITC to undertake an artificial analysis of the causes of injury. Given the variety and complexity of escape clause cases, it is unsound to attempt to prejudge the relevance or weight of any one economic factor.

Second, the amendment would conflict with a fundamental purpose of section 201. That purpose is to give domestic industries temporary relief from increased imports when the imports are a cause of injury that is at least as important as any other cause, even though the imports are fair and legal. If imports are less important than any other cause, then import relief is by definition not the appropriate remedy.

This is particularly true since import relief under section 201 is expensive. It imposes additional costs upon the consumers and otherwise promotes inflation. Moreover, by virtue of our international obligations, the United States must pay compensation, in the form of reduced restrictions on imports, or suffer retaliation, in the form of increased restrictions on exports. It is therefore helpful neither to domestic industries, nor to the national economic interest, to impose import relief under section 201 when imports are a lesser cause of injury.

It is incongruous to disallow consideration of declining demand because supply could be artificially restricted as a consequence, thus allowing producers to raise prices in the face of declining demand. Yet basic economic experience suggests that the proper response to declining demand is falling prices.

This amendment would undermine the purpose of section 201 by allowing import restrictions to be imposed even when an industry's injury has not been caused primarily by imports. In this sense, the amendment would change the escape clause from a temporary import relief statute to a recession-injured industry relief statute. Virtually all U.S. industries face at least some import competition. Accordingly, during a recession, almost any domestic industry could attempt to block imports by arguing that imports are the second largest cause of injury, even though the recession-related declining demand was admittedly the primary cause. To suggest, as this amendment does, that declining demand cannot be properly considered a discrete cause defies reality. Declining demand is just as distinct a cause of injury as increased imports, even though each, in turn, may have its own causes.

Third, the amendment is unnecessary. It is not true, as proponents of the amendment argue, that escape clause relief is always denied during a recession because declining demand associated with a recession is considered to be a greater cause of injury to the domestic industry than imports. In fact, the escape clause has been found in recent decisions to allow relief during an economic downturn. For example, in Unwrought Copper (1984), the ITC recommended import relief to the recession-sensitive copper industry, even though a significant cause of the industry's injury was the declining demand caused by earlier recessions. Similarly, in Carbon and Certain Alloy Steel Products (1984) and Stainless Steel and Alloy Tool Steel (1983), the ITC determined that a declining demand due to the 1982 recession was at least partly responsible for the domestic industry's injury.

Nevertheless, it found that increased imports were a more important cause of injury and recommended import relief.

It is therefore by no means a foregone conclusion that declining demand associated with a recession will necessarily be a cause of injury greater than imports. Whether one or the other is the greater cause depends upon their relative significance. If imports occupy only a small share of the market and have increased only slightly, a major decline in demand would probably be the greater cause of injury. If, on the other hand, the decline in demand is small and the increase in imports is large, the latter would in all likelihood be the greater cause. In short, the very fact that the economic conditions affecting domestic industries can vary so from case to case makes it impossible to predict the significance of any one factor.

5. Auctioning of escape clause quotas.

H.R. 3 provides that if the ITC recommends a quantitative restriction under section 201, the recommendation shall be to administer it by means of public auction of import licenses, unless the ITC finds that such auction system would lead to undesirable economic results. This idea is unsound for at least three reasons.

First, it would encourage prolonging escape clause relief beyond the time when it is still appropriate. The escape clause now provides that such relief should initially last no longer than five years, allows an extension of no more than three years, and urges that the relief be phased down after the third year. If, as apparently intended, the auctioning of escape clause quotas would raise a substantial amount of revenue, the revenue would become addictive and the quotas would be much harder to terminate before the eighth year since there would be a reason for retaining them independent of their principal purpose. This would be exacerbated if the period for escape clause relief should be extended.

Second, the auction concept is overly simplistic and ignores the endless variety of products, producers, markets and consumers which would be affected. The potential for creating the opportunity for monopoly power in some industries is great--since an auction of quotas (where imports represent a significant competitive presence) creates at least three likely scenarios for establishment of monopoly power. Domestic producers may agree to purchase all the quotas and either not exercise them or resell them at sufficiently high cost to price protect their sales, thereby limiting competition and driving up prices. Alternatively, a single domestic producer may purchase all the quota.

Third, the creation of a system to implement the quota auctioning would give rise to a bureaucratic nightmare involving a series of complex implementing regulations. Consider an imported product that consists of many classes covering a wide gamut of price ranges. How would the classes be defined? How would the price ranges be demarcated? How would old and new, large and small importers be accommodated? Would a successful bidder be required to use the quota or would inaction be permitted, thereby depriving consumers of a full measure of price competition? In short, the auctioning of escape clause quotas would create another non-tariff barrier that would penalize importers and consumers. Consumers would wind up paying not only the increased prices that typically accompany products under quota but the auction fees, as well. The inflationary effect of quotas thereby would be compounded.

C. Other

1. Registration and disclosure of foreign investment.

H.R. 3 contains a provision adopted in the House Energy and Commerce Committee which would require, among other things, any foreign (i.e., overseas) company owning 25% or more of a U.S. company having assets of more than $3,000,000, or sales of more than $12,000,000, not only to supply to the Department of Commerce "10-K type" information now required to be supplied by U.S. public companies to the Securities and Exchange Commission, but to report substantial amounts of other information as well. It imposes civil penalities of $10,000 per week for late registration or reporting and criminal penalties -- up to $10,000 and one year's imprisonment - for failure to register or submitting false or misleading information.

AIA strongly opposes this proposal. The registration and disclosure requirements applicable to these holdings would seriously disrupt and discourage the flow of foreign portfolio investment capital to the United States, thereby denying capital to the U.S. economy that is needed to finance growth and the creation of jobs. It would create a situation that may induce foreign investors to sell their existing holdings to avoid being subject to civil and criminal penalties. In addition, a costly and large bureaucracy would be needed to monitor and to enforce such requirements. Because of the burdensome requirements of this amendment, it should receive further thought and careful consideration in the Congressional hearing process.

2. Resolution on auto parts

H.R. 3, as amended by the Energy and Commerce Committee, contains a sense of the Congress resolution which measures the success of the current U.S.-Japan auto parts MOSS talks by a "significant increase" in sales of U.S. auto parts in Japan. While AIA agrees with the objectives of this resolution, which is to increase overseas sales of U.S. auto parts, it must be recognized that this only will be possible if U.S. parts producers make available competitively priced, quality products on a timely delivery schedule. We feel that these requirements should be reflected in this resolution.

This statement is submitted by:

George C. Nield, President
Automobile Importers of America, Inc.

Alfa Romeo, Inc.
American Honda Motor Co., Inc.
BMW of North America, Inc.
Fiat Auto U.S.A., Inc.
Hyundai Motor America
Isuzu Motors America, Inc.
Jaguar Cars, Inc.
Lotus Performance Cars
Mazda Motors of America (Central), Inc.
Mitsubishi Motors Corporation
Nissan Motor Corporation in U.S.A.
Peugeot Motors of America, Inc.
Porsche Cars North America, Inc.
Regie Nationale Usines Renault
Rolls-Royce Motors, Inc.
Saab-Scandia of America, Inc.
Subaru of America, Inc.
Suzuki of America Automotive Corporation
Toyota Motor Sales, U.S.A., Inc.
Volvo North America Corporation

COMMENTS ON MAJOR TRADE BILLS
PROPOSED CHANGES TO COUNTERVAILING DUTY LAWS
(DOMESTIC SUBSIDY LEGISLATION)

FILED ON BEHALF OF
CAMARA DE LA INDUSTRIAL DE TRANSFORMACION
DE NUEVO LEON

(THE CHAMBER OF COMMERCE OF TRANSFORMATION INDUSTRIES
OF THE STATE OF NUEVO LEON, MEXICO)

I. Introduction

Pursuant to the notice of the Committee on Finance, the Camara de la Industria de Transformacion de Nuevo Leon ("CAINTRA", the Chamber of Commerce of Transformation Industries of Mexico's State of Nuevo Leon) hereby submits comments on the proposals of the major trade bills to amend the countervailing duty law. CAINTRA opposes Section 153 of H.R. 3 (the Trade and International Economic Policy Reform Act of 1987), entitled "Definition of Domestic Subsidy", a provision which would significantly alter the internationally accepted definition of "domestic subsidy" and subject foreign manufactured products to countervailing duties simply because inexpensive, indigenous natural resources, or other goods or services, have been purchased from the foreign government and used in the manufacturing process -- even if the price charged by that government is the same for all industries in that country, with no special advantage "targeted" to any company or industry.

Section 153 of H.R. 3 was originally introduced as Section 135, entitled "Resource Input Subsidies", obviously targeting the natural resource pricing practices of foreign governments. However, during the mark-up process, the House Ways and Means Committee broadened the provision so that essentially any government program, from railroad rates to agriculture price support programs to natural resources would be deemed a subsidy under the U.S. countervailing duty law. With respect to exports from Mexico, a major concern with the pending legislation remains its designed effect to impose countervailing duties upon virtually any article exported from Mexico which requires the use of natural gas or other petroleum products. The application of Section 153 to products containing natural resource inputs alone would result in limiting market opportunities for Mexican manufacturers in the United States, thereby exacerbating Mexico's already severe foreign exchange problem. Because of the interdependence of the United States and Mexican economies, passage of this legislation would damage U.S. interests through an adverse impact on U.S. exports to Mexico, on U.S. imports of components and materials from Mexico, and on the ability of Mexican exporters to meet foreign debt obligations on a current basis.

II. Interest of CAINTRA

CAINTRA was established in 1944 to represent the interests of transformation industries in the Mexican state of Nuevo Leon. CAINTRA has 8,169 member companies, 75 percent of which are manufacturers; the remaining members are service-oriented firms. The companies comprising CAINTRA exported approximately $600 million worth of goods in 1984. During the same period, these companies imported approximately $400 million worth of raw materials and equipment from the United States. CAINTRA member companies account for approximately 7.5 percent of the total value of exports of all Mexican manufactured goods, and its members account for approximately 10 percent of Mexico's total

industrial production. CAINTRA members provide employment for some 200,000 workers, or 35 percent of all workers in the Mexican state of Neuvo Leon, which includes the major industrial city of Monterrey.

III. Section 153 of H.R. 3 Contravenes U.S. Trade Policy And U.S. Obligations Under International Law

International law distinguishes between generally available government programs and practices, on the one hand, and subsidies which are specifically related to export performance or directed toward specific industries or geographical regions, on the other. This distinction has been incorporated into U.S. trade policy and is specifically embodied in the United States' countervailing duty law. This distinction has its origin in the recognition of the fact that every nation has "comparative advantages" in certain economic areas, based on natural resources, climate, and location, and that trade law should promote the most efficient use of such comparative advantages.

It is a normal function of government to establish generally available policies and programs for the utilization and development of a country's resources. Thus, a government must be expected and permitted to develop its country's natural resources and make them available to its people. Only when resources are provided to a specific sector of the country's economy on a preferential basis vis-a-vis other sectors, conferring advantages on such favored sectors which otherwise would not exist, does international law permit other countries to adopt reactionary policies or laws.

It is against this background that a rational international consensus has developed, distinguishing those programs which are allowable from those which are properly the subject of countervailing duties. This consensus is recognized in the General Agreement on Tariffs and Trade (GATT) and the Subsidies Code, and has been incorporated into U.S. trade policy and law. As the Committee is well aware, Mexico is now a member of the GATT and subject to the rights and obligations embodied therein. General recognition of these factors by all cooperating nations provide consistency and predictability in international commerce and trade policy. The creation of authority under U.S. law to impose countervailing duties with respect to goods and services provided by a foreign government, including a government's natural resource pricing practices, would directly contravene these recognized fundamental principles on which the international trading system is based.

Section 153 would make three major changes to the basic definition of "subsidy" under the U.S. countervailing duty law: (1) it modifies the "general availability" test utilized by the Department of Commerce to focus on benefits conferred on "specific" industries or groups of industries; (2) it adds the notion of "commercial considerations" to the consideration of whether goods or services are provided by foreign governments at preferential rates; and (3) it sanctions the use of external benchmarks for price comparison purposes when determining whether a particular program is provided at a preferential rate and is, therefore, a subsidy. All of these proposed revisions would pose serious problems for the administration of the U.S. countervailing duty law, encourage retaliation and mirror legislation by U.S. trading partners, and most likely violate GATT principles.

A. General Availability Test

Under present U.S. law, a finding of a "domestic subsidy" is appropriate if a government provides goods or services at "preferential rates" to a "specific enterprise or industry, or group of enterprises or industries." Section 153 of H.R. 3

emphasizes the de facto availability of government programs, i.e., it instructs the Commerce Department to look beyond the theoretical availability of a government program, and determine whether, in practice, the program is in fact widely used. Proponents of this dangerous amendment disingenuously state that it is nothing more than a codification of the recent court decision in Cabot Corp. v. United States, 620 F. Supp. 722 (C.I.T. 1985)(hereinafter "Cabot"). This is simply untrue. It is important to note that this single, trial court opinion -- currently on appeal to the U.S. Court of Appeals for the Federal Circuit -- dealt with a single, specific set of facts, primarily involving a very unusual natural resource product ("catcracker bottoms") used in the production of a single product (carbon black). It is misleading and simply wrong to consider Section 153 as "merely codifying" the Cabot decision, since it would apply the Cabot decision to cases and facts not considered or treated by the Court in Cabot.

1. The Cabot Decision

The single principle of the Cabot decision allegedly codified by Section 153 involves the question of "specificity" and "general availability." The Cabot court, in reviewing the Commerce Department's decision that the provision of natural resource inputs to Mexcian producers of carbon black was not countervailable, redefined the "general availablility" standard as follows:

> The distinction that has evaded the [Commerce Department] is that not all so-called generally available benefits are alike-- some are benefits accruing generally to all citizens, while others are benefits that when actually conferred accrue to specific individuals or classes. Thus, while it is true that a generalized benefit provided by government, such as national defense, education or infrastructure, is not a countervailable bounty or grant, a generally available benefit--one that may be obtained by any and all enterprieses or industries-- may nevertheless accrue to specific recipients.
>
> ...
>
> The appropriate standard focuses on the de facto case by case effect of benefits provided to recipients rather than on the nominal availability of benefits.

620 F. Supp. at 731, 732. Applying the test ordered by the Court, i.e., "the de facto case by case effect of benefits provided to recipients rather than on the nominal availability of benefits," the Department of Commerce concluded on remand that natural gas is not provided on a specific basis to carbon black producers in Mexico. Specifically, the Department of Commerce stated:

> Natural gas is not only available to all industrial users, including carbon black producers, it is purchased from PEMEX and used by more than 3700 enterprises in a wide variety of industries (citation omitted) (emphasis in original).
>
> ...
>
> These two enterprises [carbon black producers] constitute only one of many industries that in the aggregate represent virtually the entire industrial sector of the Mexican economy. To the extent that carbon black

> producers, in having access to and use of natural gas, are not distinguishable from the rest of the industrial sector, we consider that there is no special bestowal of benefits to them through the provision of natural gas at a price identical to that paid by other users. (emphasis in original).

The Department of Commerce further noted that PEMEX does not target certain, specific industrial users in general, or carbon black producers in particular, in providing natural gas. The only resource input that the Commerce Department found on remand specifically provided to the Mexican carbon black industry was decant oil used as carbon black feedstock.

2. The House Committee Report

The House Committee Report, in attempting to provide examples of how the proposed new specificity language should be applied, goes beyond the holding in Cabot and creates internally inconsistent interpretations that have serious adverse implications for U.S. government programs and the industries and regions that depend upon those programs. The Committee Report states that government programs "which are clearly in the public welfare and benefit the society as a whole" are not intended to be countervailable. These programs are designated as "general benefits" and are distinguished from "generally available" benefits. However, the examples cited -- public education programs, government-supported inland waterways, and police protection -- fail to clarify the issue. One can argue that public education programs benefit defense and high technology industries more than they do service industries, that inland waterways benefit only particular industries and only particular regions, and so on. Thus, the "equal benefit standard" provides no coherent guidance as to what is a general benefit or how such a benefit will be identified in future.

Moreover, under this standard, any government program that is "in the public welfare" but is not equally used by everyone in a society would be in jeopardy, since it could not qualify as a "general benefit." For example, government water pollution cleanup, disaster relief, and accelerated depreciation would all be susceptible to countervailing duties under the standard applied to "generally available" benefits.

When "generally available" benefits are at issue, the Committee Report imposes a second standard: any "competitive advantage in international commerce that would not exist but for government action" should be countervailable. Under this approach, every government program that exists in one country but not in all others would be vulnerable to countervailing duties. Investment tax credits, low income tax rates, capital gains taxes, port facilities, regulated utility prices, and agriculture price support programs are examples of programs likely to be affected. This approach contravenes the international consensus as to the types of programs which should be countervailable. Many accepted programs in the United States and abroad would become susceptible to massive countervailing duties, and the United States would likely be viewed as creating trade barriers in violation of the GATT.

As a final example of the interpretation of the specificity standard, the Committee Report states that a government "restricting access" to its natural gas provides a countervailable benefit to those industries consuming natural gas. To the extent this example implies that any program provided to less than the entire universe of potential users, including users located outside of the providing country, cannot be generally available, there is no doubt that the process of quantifying the necessary users for countervailability will be confusing and ambiguous.

B. Commercial Considerations

Section 153 of H.R. 3 changes the treatment of government goods and services by redefining "preferential rates" to require that all government services and goods be provided on terms consistent with "commercial considerations" if they are to avoid countervailing duties. However, governments and private businesses have different costs, revenue sources, and policy concerns. The current countervailing duty law recognizes these differences by requiring that governments not discriminate among recipients of government services and goods in order to avoid subsidy findings.

In contrast, narrow commercial standards are inappropriate benchmarks as a measure of the acceptability of government actions. The fact that different private firms can and do adopt varying business strategies makes it administratively impossible to decide the proper commercial benchmark. In addition, in many cases, there is no commercial counterpart to the government's functions, and hence, no private benchmark would be available or appropriate for comparison.

C. External Benchmarks

Section 153 of H.R. 3 provides for the use of external benchmarks in determining whether government goods and services are countervailable. This provision is unfair and unworkable. Many goods and services have no world market prices, and individual countries' prices will vary widely depending on differences in such factors as costs, supplies, quality, and demand. Given the enormous differences between countries, it is inappropriate even to consider the idea that another country's price for a good or service can be a valid benchmark.

Where world market prices exist, such prices are often subject to government manipulation and are thus arbitrary. Finally, the use of external price benchmarks deprives countries of their natural comparative advantages, a highly unfair and undesirable result, which runs contrary to U.S. foreign policy and foreign assistance program objectives.

A preview of the problems associated with the use of external benchmarks is seen throught a review of the Commerce Department's remand determination in Cabot. The Cabot court directed the Commerce Department as follows:

> Although preferential pricing clearly is a countervailable subsidy, [preferential pricing], as only one such example of a subsidy, does not include all pricing programs constituting subsidies. The [Commerce Department's] attention must therefore be directed to the broader question of whether the Mexican pricing program for carbon black feedstock ... [is an] additional benefit or competitive advantage.

620 F. Supp. at 733. In executing the Court's mandate on this issue, the Commerce Department considered the best benchmark for measuring the competitive advantage to Mexican carbon black producers to be the price of carbon black feedstock on the world market, in this case, the U.S. Gulf Coast prices for carbon black feedstock. The Commerce Department explained the problems with this benchmark in the following terms:

> We recognize, along with the Court, that the availablility of an input below world market prices or prices charged in other countries may be the result of various non-countervailable factors such as comparative advantage. (citation

> omitted). But these factors as they affect prices (abundant supply, low-cost production, advantageous location of users, etc.) are extremely difficult to quantify. Given that the supply of and demand for petroleum products are often manipulated by such government actions as production controls and taxes on consumption, determining what the price of carbon black feedstock would be in Mexico absent government control ... is impossible. In applying the Court's competitive advantage test, the only alternative is the "world market" price.
>
> Moreover, prices for petroleum on the world market are themselves not free from manipulation by governments. In the United States, stability has often been brought about through tax policy and regulations that affect production. On the international market, OPEC has had a formidable impact on prices in recent years. Crude oil prices skyrocketed mainly because of OPEC's efforts, and plummeted when OPEC could no longer control supply.
>
> ...The high value of the subsidy found in these remand results is largely attributable to the rigid control over crude oil prices still exercised by OPEC in 1982. The most glaring flaw in the appplication of the competitive advantage test to this case is that the subsidy is measured using a manipulated price, and the size of the subsidy reflects the degree to which Mexico chose its own course and did not let itself be influenced by OPEC. (emphasis added)

As shown above, even if the Department of Commerce is authorized to make "adjustments" to these external prices, the complexity of making any adjustments and the short time frame in which the Department must make these adjustments virtually ensures that the final "benchmark" will be arbitrary. The lack of predicatability inherent in these calculations will therefore create serious uncertainty in the marketplace and will effectively prevent governments from trying to eliminate what U.S. law considers to be a subsidy program.

In the final analysis, Section 153 of H.R. 3 would not simplify the determination of what constitutes a countervailable subsidy, but would interject uncertainty among our trading partners and domestic industries and create an administratively impossible standard that defies predictable result. Such uncertainty in the application of the U.S. countervailing duty law will undoubtedly result in foreign governments accusing the United States of arbitrarily determining the existence of domestic subsidies.

IV. U.S. Trade Partners Could Be Expected To Retaliate By Imposing Countervailing Duties With Respect To U.S. Programs

If Section 153 of H.R. 3 were to become law, providing authority to impose countervailing duties with respect to natural resource pricing practices, among others, the international consensus among U.S. trade partners concerning the underlying principles of countervailing duties would be broken and any reciprocal obligations on the part of these nations could not be enforced. The United States would be violating international trade norms and altering them in a manner inconsistent with its international obligations, thus inviting U.S. trade partners to do likewise with respect to the United States. Even if foreign governments were to adopt a narrow construction of H.R. 3 and limit themselves to natural resource inputs, U.S. trade partners could impose countervailing duties with respect to a number of U.S. government programs, including oil depletion allowances, price controls on natural gas, Tennessee Valley electricity, Western dams and irrigation projects, and government coal and oil leases.

The imposition of countervailing duties on U.S. goods sold in foreign markets with respect to the U.S. programs mentioned above would make U.S. exports more expensive, and therefore less marketable, in external markets, thereby harming U.S. export industries. If enacted, Section 153 of H.R. 3 could set in motion a process which would ultimately harm U.S. producers. Moreover, the expected harm to U.S. export-oriented industries would further increase the U.S. trade deficit, undercutting one important purpose of this legislation.

V. Mexico's Natural Resource Policies and Pricing

The immediate resource input targets of Section 153 of H.R. 3 are U.S. imports from Mexico of products such as cement, concrete block, lime, carbon black, ceramic tile, and ammonia. However, the passage of this legislation would also limit other imports that are energy intensive, or that contain a substantial proportion of other resource inputs.

Under the Constitution of Mexico, natural resources, including petroleum and minerals, are the common property of all of the people of Mexico (Article 27 of the Mexican Constitution of 1917). To further the exploitation of Mexico's abundant petroleum supplies, the Government of Mexico established Petroleous Mexicanos ("PEMEX") in 1938. In a deliberate effort to maximize the exploitation of Mexico's abundant petroleum resources, the Government of Mexico has provided petroleum resources to all of its domestic industries at prices which are calculated to recapture the fully allocated cost of producing such resources. Until the dramatic increases in the export prices of oil established by the Organization of Petroleum Exporting Countries ("OPEC"), of which Mexico is not a member, the difference between the price at which PEMEX provided petroleum products to Mexico's domestic industries and the export price of OPEC countries was insignificant. After the successive oil shocks of the 1970's, Mexico continued its policy of providing petroleum products to its domestic industries at prices which would cover the cost of producing such products, with the result that the price differential between OPEC prices and Mexico's domestic prices widened appreciably.

Because of Mexico's domestic economic difficulties, the need to reduce the Government's deficit, and in light of growing U.S. concern over Mexico's natural resource pricing practices, PEMEX has implemented a policy of increasing natural resource prices for domestic industry users, at the same time that the world market price for oil has plummeted, further closing the gap between the world price and that charged by the Government of Mexico. Similarly, the price of natural gas supplied to industrial users in Mexico increased 342 percent during the period January 1984 to December 1985, while the price for no. 6 fuiel oil during the same period increased by 249 percent.

Most significantly, a comparison of recent U.S. spot prices for natural gas with the price of natural gas in Mexico during roughly the same time period shows little or no difference between such prices. Attached hereto as Exhibit 1 is a chart setting forth this comparison. Exhibit 1 shows that the price (as delivered to Mexican customers) for natural gas in Mexico in late 1986 was roughly equivalent to spot prices in California in early 1987 and well above spot prices in West Texas in early 1987. Similarly, an examination of recent prices in Mexico for no. 6 fuel oil demonstrates tht even though the price in pesos to Mexican customers rose from October to November 1986 because of the exchange rate situation, the U.S. dollar price of Mexican no. 6 fuel oil dropped during this period. Exhibit 2, attached hereto, sets forth this information.

CAINTRA respectfully submits that this Committee should consider the dramatic increases in natural resource prices for Mexican industrial users in deciding whether the proposed legislation, with its obvious dangers for the overall trade and economic interests of the United States, should be enacted.

VI. The Government Of Mexico Has Taken Action To Improve Trade Relations With The United States And To Liberalize Its Trade And Investment Policies

During the de la Madrid Administration, the Government of Mexico has taken steps which have had the effect of improving trade relations with the United States and liberalizing its trade and investment policies. Most significantly, last year Mexico joined the GATT and took steps intended to bring its international trading practices into greater conformity with those of other western trading nations.

Other actions taken by the Mexican government within the last few years include: the unilateral elimination of Mexico's major export subsidy program (CEDI); the negotiation of the U.S.-Mexico bilateral subsidies agreement, signed in April 1985, and the additional commitment to develop a bilateral framework agreement on trade and investment between the United States and Mexico; a net reduction in the cost of importing goods into Mexico by removing prior import license requirements on thousands of product categories; and moving away from non-tariff barriers and toward the use of tariffs to regulate trade.

The Government of Mexico has also taken significant action in the area of intellectual property protection, an issue of great importance to the Administration. On January 17, 1987, Mexico enacted amendments to its patent and trademark laws which provide a number of important improvements. These improvements include extending the term of patents and certificates of invention form 10 to 14 years; providing process patent protection for pharmaceuticals, chemical products, alloys, foodstuffs and beverages for animals and agricultural chemicals; providing both process and product protection for anti-pollution equipment and apparatus; and various improvements relating to patent lapse, disclosure requirements, trade secret protection, and "trademark linkage." In recent testimony before the House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, Ambassador Michael B. Smith, Deputy United States Trade Representative, acknowledged these developments.

VII. Conclusion

Section 153 of H.R. 3 would be economically and politically counterproductive to U.S. international trade policy and U.S. export-oriented industries. The proposed legislation is inconsistent with U.S. trade law and obligations under the GATT. The legislation would harm U.S. export-oriented industries by inviting U.S. trade partners to adopt similar measures, and by reducing earnings of U.S. trade partners from exports to the United States, thus reducing available revenue to purchase U.S. products.

With specific regard to Mexico, the proposed legislation would further depress the Mexican economy, making it difficult for Mexico to honor its substantial loan obligations to United States creditors and to continue importing from the United States. Moreover, an economically weak Mexico would be vulnerable to political destabilization, further exacerbating an already troublesome situation in Central America.

For all of the reasons set forth herein, CAINTRA de Nuevo Leon respectfully submits that the proposed natural resources pricing legislation should not be enacted.

NATURAL GAS PRICE COMPARISON

UNITED STATES PRICE*

State	Price ($/mmbtu)
California	
Intra-state well head	$1.70
Delivered to pipeline	$1.76
Delivered to utility	$2.11
West Texas	
Inter-state well head	$1.38
Intra-state well head	$1.39
Delivered to pipeline	$1.48
Delivered to utility	$1.59

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*Source: Natural Gas Week (February 23, 1987)

MEXICAN PRICE*

Date	Pesos/cubic meter	U.S. Dollars/1000 cu ft.+
10/1/86	45.2174	$1.70
11/1/86	47.8261	$1.68

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*Price as delivered to Mexican customers. Source: PEMEX.

+Currency conversion using controlled exchange rate. On October 1, 1986, the rate was 754 pesos to the dollar, and on November 1, 1986, the rate was 808 pesos to the dollar.

NO. 6 FUEL OIL

MEXICAN PRICE*

Date	Pesos/liter	U.S. Dollars/barrel+
10/1/86	26.95	$5.68
11/1/86	28.696	$5.65

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*Price as delivered to Mexican customers. Source: PEMEX.

+Currency conversion using controlled exchange rate. On October 1, 1986, the rate was 754 pesos to the dollar, and on November 1, 1986, the rate was 808 pesos to the dollar.

Submitted by

Caribbean/Central American Action

This statement is submitted to the Committee on Finance by the 100 companies which comprise Caribbean/Central American Action, and on behalf of the following four private sector associations: The Caribbean Association of Industry and Commerce; Centre de Promotion des Investissements et des Exportations de Haiti; the Costa Rican Coalition for Development Initiatives; and the Salvadoran Foundation for Social and Economic Development (see Attachment for description).

The statement is submitted for incorporation in the official record of the hearings on omnibus trade legislation, held on April 7th and 8th, 1987.

The statement is limited to a discussion of the need for amendment of certain U.S. trade statutes to enable fulfillment of the objectives of the Caribbean Economic Recovery Act (CBERA). The statement contains specific proposals for maintaining and improving the benefits of the aforementioned Act.

Passage of the Caribbean Economic Recovery Act by the 98th Congress is viewed by the four private sector associations as a long-term commitment by the U.S. Congress to build into U.S. trade laws, special benefits for the Caribbean Basin countries. These benefits would take into account the serious economic handicaps under which all Caribbean Basin countries are struggling.

As a first step, the Congress created a limited, one-way Free Trade Arrangement for the 28 beneficiary countries. This was a significant action, which demonstrated the strong conviction of the Congress that United States producers could compete with Caribbean Basin exporters without the additional advantage of customs duties. The elimination of duties was intended to enable the beneficiary countries to expand their exports, and to attract investment in nontraditional export sectors.

Unfortunately, the global trading environment has worsened for the Caribbean Basin since the CBERA was implemented. Increasingly aggressive producers in the newly industrialized countries (notably, Taiwan, Korea, and Brazil) have rapidly expanded their direct exports to the United States and to other developed countries. As a result of these developments, it has become harder for Caribbean Basin exporters to establish a market in the United States and elsewhere. Today, more than three years into the life of the Free Trade Arrangement, Caribbean Basin exports account for a smaller share of total U.S. consumption than they did when the program was first announced.

The associations submitting this statement believe that further special trade measures on behalf of the Caribbean Basin are fully warranted by the Caribbean Basin's export performance, and the outlook for overcoming the substantial competitive edge enjoyed by the newly industrialized countries.

Our proposals for maintaining and improving the CBERA are as follows:

Prolong the Benefits of the Original Act

The Congress should prolong the life of the duty-free benefits of the CBERA. The program has only eight years left to run. Banks and other financial institutions considering loans for Caribbean Basin investments are concerned by the fact that CBERA duty-free treatment is scheduled to expire well before such loans would be retired. Prospective investors are similarly concerned: The guarantee of preferential access to the U.S. market is valid only through 1995, and investments being considered in 1987 may not begin to generate export income until 1989 or later.

Extend Duty-Free Treatment to Excluded Products

We recommend that the President have authority to extend duty-free treatment to the products now excluded, subject to a safeguard mechanism negotiated with the beneficiaries, and final Congressional approval of the changes.

Duty reductions would affect products that are generally made with U.S. components, and therefore qualify for reduced duties under TSUS 807.00. While the elimination of duties would have little impact on the final price in the United States, the cost savings to Caribbean Basin producers would help them compete with products originating in the Far East and elsewhere.

Insulate the Caribbean Basin from the Potential Negative Impact of More Rigid U.S. Trade Statutes

Many of the proposals being considered in the 100th Congress are designed to deal with trading practices associated with developed and more advanced developing countries. These policy reforms could have an unintended but substantial negative effect on further development of nontraditional export industries.

Accordingly, the associations request that any omnibus trade legislation include a policy statement that nothing in the legislation should be implemented in a manner which is inconsistent with the purpose and provisions of the Caribbean Basin Economic Recovery Act. To ensure that this general policy statement can be carried out, certain provisions now being considered would have to be modified. The most important are:

1) Presidential Discretion in Escape Clause Cases

The President should have unlimited authority to exempt CBI imports from import relief measures, unless the USITC, in its recommendations under Section 201(d)(1), states that relief, in order to be effective, must cover CBI trade.

We oppose the provision of S. 490 which requires the President to impose relief if the USITC makes an affirmative injury determination by a unanimous vote.

2) Provisional Relief in Escape Clause Investigations

S. 490 requires the President to impose provisional import restrictions during a Section 201 investigation if he finds that "critical circumstances" exist. In cases involving perishable commodities, the Secretary of Agriculture may recommend that provisional relief be applied if emergency conditions are shown to exist.

The CBERA already contains a special safeguard mechanism for perishable commodities. It provides for the restoration of MFN duties as a provisional relief measure. In light of the modest overall export capacity in the Caribbean Basin of perishable commodities, we believe that restoration of MFN duties should be sufficient in all cases. Therefore, the CBI should be exempted from application of a new safeguard mechanism for perishables.

With regard to "critical circumstances", the President should have discretion not to apply provisional relief if CBI imports have not increased significantly over a short period of time.

3) Cumulation in Antidumping and Countervailing Duty Cases

We recommend that the CBI imports be exempted from cumulation in all such cases. If CBI imports are not causing material injury, or threatening to cause injury, the case against CBI imports should be terminated.

The cumulation provision drawn from the Trade and Tariff Act of 1984 has already worked hardship on CBI producers of nontraditional products, notably cut flowers. The threat to the CBERA would be even greater if the provision now in H.R. 3 were adopted.

We therefore propose a exemption from both existing and proposed provisions on cumulation.

4) Special Procedures for Instances of Diversionary Input Dumping, Anticircumvention, and Downstream Monitoring

The associations feel strongly that the proposals in S. 490 and H.R. 3 on diversionary input dumping, and anticircumvention are serious threats to the objectives of the CBERA. Caribbean Basin manufacturing is almost exclusively based on processing of imported components. The majority of these components are of U.S. origin, but some components must be imported from third countries.

Rather than penalize the CBI countries for the pricing practices or other unfair trade practices of third countries supplying components, the United States Government should have the flexibility to negotiate solutions with the CBI exporting country or with the country supplying the unfairly traded component, with the purpose of enabling continued processing and export from the CBI country or countries involved.

We propose that the Committee on Finance consider combining the procedures for downstream product monitoring with Presidential negotiating authority as a means of protecting the Caribbean Basin from the adverse investment impact of new laws on diversionary dumping, etc.

5) Provide Negotiating Authority to Expand the CBERA Benefits

The maintenance and improvement of the benefits of the CBERA should be added as a principal negotiating objective for the Uruguay Round of Multilateral Trade Negotiations. In the context of those negotiations, the United States should negotiate the reduction or elimination of the remaining tariff and nontariff barriers which significantly retard expansion of CBI exports.

6) National Security Waiver Authority

S. 490 limits the waiver authority to situations in which relief would be detrimental to the national security.

We request that new legislation direct the President to consider the furtherance of the goals of the CBI as in the national security interest of the United States.

7) Revising Legislation on Ethanol

Recent legislation providing for special rules-of-origin for CBI ethanol imports threatens the viability of current investments in the region, and would inhibit further investment.

We request that the Finance Committee consider modification of the existing legislation to reflect commercial realities, Particular attention should be given to the special value-added criterion and the phase-in of this new criterion.

8) Injury Determination in Escape Clause Cases

The Caribbean Basin Initiative has been a catalyst to development of twin-plant operations between U.S. and Caribbean firms. The products of these operations contain a significant U.S. labor content.

Accordingly, it is appropriate for the U.S. International Trade Commission to consider U.S. sales of these products as a factor indicating the absence of serious injury or threat thereof.

ATTACHMENT 1

The CARIBBEAN ASSOCIATION OF INDUSTRY AND COMMERCE (CAIC) is the region-wide private sector organization for the English-speaking island nations of the Caribbean. Based in Barbados, CAIC represents national chambers of commerce and manufacturers associations. CAIC is the policy voice for the region's forward looking private sector.

The COSTA RICAN COALITION FOR DEVELOPMENT INITIATIVES (CINDE) is a private sector entity with sole responsibility for carrying out the country's foreign trade and investment promotion effort. CINDE also conducts a variety of programs designed to foster broad-based economic growth, such as credit and technical assistance to small business.

The SALVADORAN FOUNDATION FOR SOCIAL AND ECONOMIC DEVELOPMENT (FUSADES) is a private sector entity representing the nation's forward-looking business community. FUSADES programs are designed to strengthen the country's economy by broadening the base of economic participation, aiding small business, and fostering nontraditional exports.

The CENTRE DE PROMOTION DES INVESTISSEMENTS ET DES EXPORTATIONS (PROMINEX) is a public-private sector business promotion entity in Haiti. It brings responsible private business leadership into the battle to overcome the country's severe economic problems. It is the key entity for promoting Haitian exports.

COMMITTEE TO ASSURE THE AVAILABILITY OF CASEIN
3213 O STREET, N.W.
WASHINGTON, D.C. 20007

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate
SD-205 Dirksen Senate Office
  Building
Washington, D.C. 20510

RE: Major Pending Trade Bills -- Casein Imports Should Not Be Restricted

Dear Mr. Chairman:

Pursuant to your Press Release of March 20, 1987, this hearing was announced to compare pending major trade bills such as H.R. 3, S. 490 and Title II of S. 636. This statement is submitted on behalf of the Committee to Assure the Availability of Casein ("CAAC") and discusses why these major pending trade bills should not, in any way, restrict the importation of casein by quota action or by any other non-tariff barrier measure.

In particular, this testimony objects to proposed legislation such as S. 686 becoming a part of a pending major trade bill. S.686 is a bill introduced on March 6, 1987 by Senator Daschle (D.-S.D.) seeking a 50 percent quota on casein based on an average of imports during the period beginning January 1, 1981 and ending December 31, 1985. This proposal, would reduce by more than 50 percent existing imports of casein when not one pound of casein is produced in the United States! In addition, not one pound of casein is restricted by quota by any other country in the world!

I. The "CAAC"

The "CAAC", (membership list attached for information) was established in 1978 by U.S. companies when unjustifiable and unsuccessful attempts were lodged by certain sectors of the U.S. dairy producers industry to place a "Section 22" (Agricultural Adjustment Act of 1949) quota on imported casein. Thereafter, almost every year requests have been submitted to the Secretary of Agriculture or to the Congress seeking a quota against imported casein alleging that it disturbs, in a material way, the price support program. These unfounded, protectionist efforts are taking place once again.

The "CAAC" continues to resist these efforts which would ultimately harm, in many ways, the U.S. consumer and, at the same time, violate our country's international obligations under the General Agreement on Tariffs and Trade ("GATT").

II. S. 686 Type Legislation Should Be Rejected

The following facts explain why S. 686, or similar bills seeking to restrict casein, are unjustified, unnecessary, and should be rejected:

1. Casein is not manufactured in the United States. Prior to the Agricultural Adjustment Act of 1949, which created price supports for nonfat dry milk, butter and cheese, casein was produced throughout the United States. When the Congress, at the request of certain segments of the dairy producers industry,

decided to support nonfat dry milk and not casein, casein production went out of business "over night". As a consequence, today all casein is imported into the United States!

2. If casein were produced in the United States, unless it was significantly subsidized, it would have to sell between $3.00 and $3.50 per pound. Currently imported casein, most of which is from New Zealand, Ireland and Australia, sells for approximately $1.15 per pound. New Zealand, which establishes the world market price for casein, does not subsidize its exports to the U.S. It takes three pounds of liquid skim milk plus the cost of new manufacturing plants, machinery, land, utilities, labor and distribution system costs to sell casein. To take three pounds of liquid skim on today's market and to add the other mentioned cost factors means casein would have to sell for over $3.00 per pound in our country -- approximately $2.00 per pound more than current imports.

3. Nonfat dry milk produced in the United States cannot, in more than 90 percent of the uses for imported casein, be substituted for casein. No matter what one might hear from certain segments of the dairy producers lobby, food scientists, and other technical authorities will attest to the fact that almost all of the uses for imported casein today cannot be met by the substitution of nonfat dry milk!

4. Since 1979, there have been four U.S. Government studies on casein! The International Trade Commission ("ITC") has held a Section 22 hearing and concluded that casein did not materially interfere with the price support program. The ITC held that quota restrictions or increased duties on casein would have no significant impact except to raise the cost to consumers by hundreds of millions of dollars! The ITC also had a fact-finding study in 1979 and concluded the same. Quotations from both of these investigations are given later in this testimony. The United States Department of Agriculture has had two investigations of casein within the last five years and both agree with the ITC findings. Again, quotations from the USDA are also given in this testimony.

5. A quota on casein or other restrictions on casein would be inflationary. The "CAAC" estimates that these costs could well add over $300 million a year to consumer costs.

6. Casein is a GATT item. To place an unfair nontariff barrier restriction on its importation would clearly violate the GATT and could cause retaliation by our trading partners. This statement should and can be verified with appropriate officials within the U.S. Government handling trade matters.

7. A quota or other restriction on imported casein would inhibit the production of hundreds of products utilizing casein -- from cool whip to coffee whiteners, to substitute low-cholesterol cheeses, other diet foods, pet foods, medical nutritionals which keep babies alive, high protein hospital formulas, industrial glues, and a host of other products! None of these products can use nonfat dry milk as a substitute for casein. Many would not be produced if casein were placed under a quota.

8. A quota would deny consumers their free choice of desired products. "Consumer choice" is the main issue in this casein dispute!

9. Section 105 of the Farm Security Act called for the reestablishment of a U.S. casein industry between June 1, 1986 and January 1, 1990. To date, there have been no offers of U.S.

casein to any of our members who represent over 90% of the casein trade. Our country needs imported casein and it does not make sense to place it under quota when Section 105 is apparently not a success!

III. History

As stated, in 1981, Secretary of Agriculture Block granted a Section 22 hearing which was conducted by the International Trade Commission. That Commission correctly concluded that imported casein was not materially disturbing the price support program! The facts have not changed -- currently casein imports do not materially disturb the price support program and no quota is justified.

The Section 22, ITC report of January, 1982 concluded on page 1:

> "On the basis of the information developed in the course of the investigation, the Commission finds and recommends that *casein, mixtures in chief value of casein*, and lactalbumin, provided for in items 493.12, 493.17, and 190.15, respectively, of the Tariff Schedules of United States (TSUS), *are not being, and are not practically certain to be, imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program for milk undertaken by the Department of Agriculture, or to reduce substantially the amount of any product processed in the United States from domestic milk*." (Emphasis added.)

In addition, in 1979 the International Trade Commission conducted a fact-finding report under Section 332 of the Trade Act, and concluded that imported casein did not materially interfere with the price support program.

The ITC report of December, 1979 stated on pages 4 and 5 thereof:

> "The data collected during the course of the Commission's investigation indicate *virtually no relationship between imports of casein and mixtures of casein and purchases of nonfat dry milk under the price-support program in recent years.* Likewise, *no clear relationship is apparent between imports and domestic production or consumption of nonfat dry milk. Additionally, no clear relationship is apparent between imports of casein and mixtures of casein and other forms of domestic dairy production. Products of the dairy industry are not considered by most of the end users of the imports to be a primary or technically viable substitute for casein in many of its current users*.

In addition, yet another study was conducted by the Department of Agriculture. This study, which was released in 1981 at the request of the Congress, also stated that if a quota was placed on imported casein, in conformity with Section 22 of the Agricultural Adjustment Act, that only *insignificant* results would be experienced with the price support program and therefore such a quota was *not* justifiable.

The Abstract of the 1981 study stated:

> "This study examines the economic implications of restricting the importation of casein and lactalbumin--dairy proteins used in various food, feed, and industrial products. Under existing legislation and trade agreements, the most extreme restrictions that may be imposed are a 50-percent quota or a 50-percent ad valorem tariff. If either of these were imposed, users of casein would shift to soy-based protein and other ingredients wherever possible, although product quality could suffer. Some casein use would be replaced by skim milk solids, but not enough to significantly affect CCC purchases under the dairy price support program. Import restrictions would increase the cost of producing goods containing casein, and thus raise prices to consumers." (Emphasis added.)

IV. Issue

Can four government findings during the last seven years now be wrong in 1987? It should be kept in mind that the "CAAC" did not ask for any of these government reports or actions completed at a considerable cost to the taxpayer. In each case, the National Milk Producers Federation, supported by the Dry Milk Institute and other related organizations, requested each of these studies. It is somewhat interesting to note that each time one of these reports was issued, these organizations did not like the results and eventually prompted an additional study or a "quota scare" in the Congress by the introduction of proposed legislation. The same is happening today.

V. Casein A Scape-Goat Issue

Certain dairy interests, recognizing that changes in the price support payment are occurring and that more are inevitable have, (1) tried to blame all CCC purchases of nonfat dry milk on casein rather than admit that the current high levels of purchases might be due to the current price support incentive and, (2), which is really more disturbing, leadership of some dairy groups want a quota on casein simply so they can return to their membership having accomplished something in return for reducing the current parity formula despite the fact that it won't help the dairy farmer!

VI. The Whey Disposal Problem

Whey surplus is a major problem for many U.S. dairy producers and was a subject of a hearing by the Agriculture Committee of the House of Representatives not too many years ago. Billions of pounds of whey, a by-product of cheese production, are generated each year in the United States. With American cheese consumption on the rise, cheese production has increased significantly in recent years. This has brought about a related increase in whey availability, although the demand for whey products has not increased at the same rate.

Whey utilization is a serious problem facing U.S. dairy producers. While limited quantities can be used in specialty products, and the "CAAC" is encouraged by the progress being made in this area today, the vast bulk of this whey must be treated in company or municipal waste disposal facilities. In many locations around the country, existing pollution control facilities are straining to meet this increased demand placed on them.

If U.S. dairy producers were to produce 100 million pounds of casein, there would be billions of pounds of additional acid whey as a by-product which would seriously jeopardize existing disposal facilities!

VII. No Material Price Support Impairment

Current casein imports do not materially interfere with the dairy price support program for the same reasons given in the previously cited government studies. The following table and chart prove that casein imports do not relate to CCC purchases of nonfat dry milk, from 1970 thru 1986!

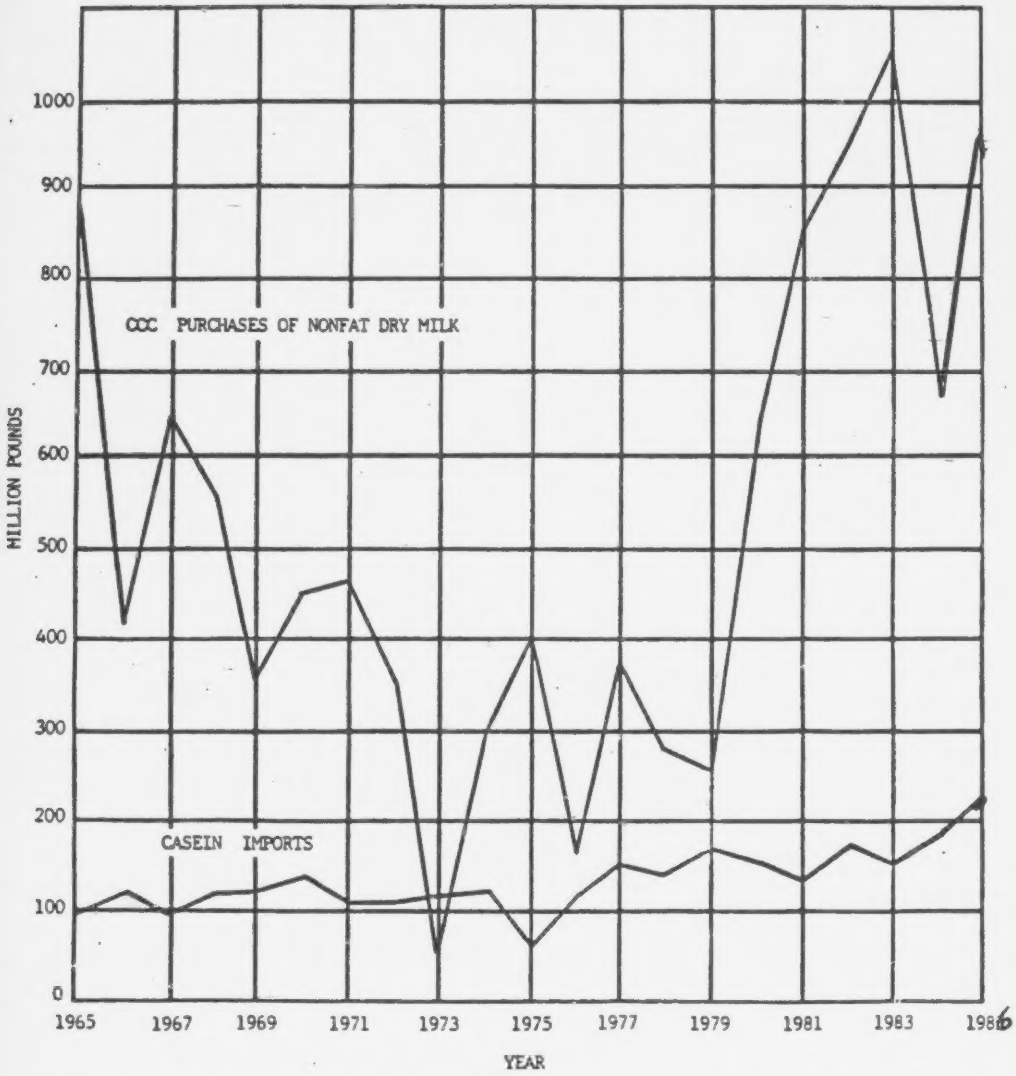
CASEIN IMPORTS DO NOT RELATE TO CCC PURCHASES OF NFDM

Millions of Pounds

Year	Casein Imports (1)	CCC Purchases (1) of NFDM
1970	135.3	451.6
1971	105.9	456.1
1972	105.4	345.0
1973	112.8	36.8
1974	113.3	265.0
1975	58.4	394.5
1976	112.1	157.1
1977	146.5	461.7
1978	137.1	285.0
1979	151.0	255.3
1980	151.2	634.3
1981	127.8	851.3
1982	176.8	948.1
1983	159.5	1061.0
1984	192.3	678.4
1985	234.0	940.6
1986	229.7	827.3

(1) USDA Statistics

USDA PURCHASES OF NDM AND CASEIN IMPORTS



* In 1977, dates of Marketing Year were changed; However, during this 6 month transition period, 345.5 million lbs. were purchased.

Conclusion

Because casein clearly does not materially interfere with the price support program, because it is not produced in the United States and would be highly inflationary and require large government subsidies if it were, and because U.S. consumers want and need casein-based products, a quota, of any type, or other nontariff barrier restrictions should not be imposed. Some of the largest U.S. dairy cooperatives in business today are significant purchasers and users of imported casein, and dairy families are consumers of casein products just like everyone else!

Ambassador Clayton Yeutter, United States Trade Representative, stated before the House Ways and Means Committee on February 20, 1986 the following:

> "...Protectionism will destroy the economic vitality of America's economy. It would stifle competition, retard innovation, reward the inefficient, cost jobs, invite retaliation and lower America's standard of living. Since the end of World War II, the U.S. has been a leader in promoting a more open and equitable trading system. With all the flaws in the system, the Administration will continue to work, singly or in concert with our trading partners, to renew and restore the system..."

A casein quota would amount to protectionism at its worst.

The "CAAC" sincerely appreciates the consideration by the Committee of its views.

Respectfully submitted,

Max N. Berry
Executive Director and
General Counsel

STATEMENT OF RICHARD PATTERSON

Introduction

This statement regarding the consideration by the Senate Finance Committee of trade negotiating authority for U.S. participation in a new round of Multilateral Trade Negotiations is submitted by Richard Patterson, Government Relations Manager of Dow Chemical, U.S.A. and International Trade Committee Chairman of the Synthetic Organic Chemical Manufacturers Association (SOCMA). SOCMA is vitally interested in the trade negotiating authority to be granted to the President with respect to the current round of trade negotiations.

SOCMA is a nonprofit trade association representing over 100 organic chemical companies, the majority of which have annual organic sales under $50 million. The members of SOCMA produce more than 5,000 synthetic organic chemicals which are primarily intermediates and finished chemicals for industrial use.

MTN Negotiating Authority

SOCMA strongly believes that this new round of Multilateral Trade Negotiations should focus on removing foreign non-tariff barriers and developing workable trade dispute resolution procedures, rather than simply on tariff reductions. Granting the President broad authority to proclaim tariff reductions could accelerate the declining balance of trade in chemicals and seriously injure benzenoid chemical producers. The new round instead should address a number of non-tariff issues which are crucial to the long-range competitive position of the U.S. chemical industry. These include restrictions on access to foreign to markets by means of import licensing schemes, restrictions on foreign investment, and ineffective protection of intellectual property rights.

SOCMA supports granting the Administration an extension of its existing authority to negotiate multilateral trade agreements subject to Congressional approval under an expedited review procedure. We support the approach taken in Section 103 (a) of the Senate bill, S. 490, which provides for tariff negotiating authority rather than tariff proclamation authority. We oppose granting the President a blank check to proclaim substantive tariff reduction without any Congressional review. We believe that there should be no difference between tariff and non-tariff barrier MTN authority. In both cases, fast track negotiating authority should be conditioned upon notification of the relevant House and Senate Committees of the Administration's precise negotiating objectives.

In establishing authority for international trade negotiations, S. 490 provides that no trade agreement may be entered into to effect a reduction in tariffs which is less than 50% of the rate applicable on enactment. SOCMA believes that the bill also should require that tariff negotiations achieve sectoral balance so that, for example, tariff reductions on chemicals are matched by foreign concessions of equal value to the chemical industry. Further, it is essential that the Administration be required to identify in advance the depth of cuts in U.S. tariffs by sector that the Administration would propose to achieve its tariff negotiation objectives. These tariff reduction levels should operate as ceilings on tariff cuts subject to the fast track review procedure. Such tariff reduction levels are likely to vary from sector to sector.

SOCMA urges that the Senate adopt a procedure to permit affected industries to seek exclusions of specific products from any tariff reductions on the grounds of import sensitivity. The House has examined this proposal for import sensitive products based on the GSP eligibility factor. The ITC should be directed to conduct an investigation prior to the commencement of tariff negotiations on a particular group of articles in order to identify import sensitive articles. Such articles should be exempt from any tariff reductions unless the ITC determines that a specified reduction in tariffs could be made without causing any injury to the domestic industry. If the ITC made such a determination, it should establish a tariff reduction cap for the article. Any duty reductions in excess of the level set by the ITC should not be subject to fast track review. To ensure that the proposed procedure is more than a formality, it is imperative that the definition of import sensitivity be given a reasonable interpretation and not defined to mean the level of injury required to obtain import relief under Section 201 of the Trade Act.

SOCMA also strongly believes that the bill should require that tariff reductions be phased in at a rate of no more than 1% _ad valorem_ per year.

STATEMENT OF JOHN M. GREER, VICE PRESIDENT
GRAPHIC COMMUNICATIONS INTERNATIONAL UNION
BEFORE THE SENATE COMMITTEE ON FINANCE

HEARINGS ON PENDING MAJOR TRADE BILLS

April 21, 1987

Mr. Chairman, I am John M. Greer, Vice President of the Graphic Communications International Union, an affiliate of the AFL-CIO. I am submitting this statement on behalf of the 200,000 members of the G.C.I.U.

Our union urges this Committee to pass trade legislation which will enable our Nation's manufacturing industries to fight back against unfair foreign trade practices. Because the G.C.I.U. represents printing workers, we are particularly concerned with those unfair trade practices affecting printed materials. These practices include the piracy of American copyrights and the denial of basic worker rights. The Section 337 language presently in S. 490 addresses the problem of copyright piracy. We urge this Committee to adopt an amendment to Section 337 which would address the denial of basic worker rights.

On July 1 of 1986, the Manufacturing Clause of the Copyright Act expired. While that law is still on the books, it cannot be enforced because of the passage of this deadline without enactment of an extension.

In general, the Manufacturing Clause had required that most non-dramatic literary works sold in the U.S. be printed in the U.S. in order to obtain the full protection of U.S. copyright laws. A major exception to this requirement permitted books whose content consisted of more than 50 percent illustrated material (i.e., most "coffee table" books and many books for young children) to be printed abroad and sold in the U.S. while still obtaining full U.S. copyright protection. As a result of the exceptions to the Manufacturing Clause, 1985 and 1986 found the U.S. -- for the first time in its history -- a net importer of books.

Despite this and other exceptions, the Manufacturing Clause had served as the **sole means of assuring at least some measure of fair trade for the U.S. printing industry.** The U.S. is a signatory to the Florence Agreement and to other multilateral agreements which effectively prevent us from imposing any tariff or non-tariff barriers to imported printed materials. While it is possible that our domestic printing industry could petition for relief under existing trade laws (i.e., sections 301 or 337 actions), these actions are extremely costly and -- especially in the case of 301's -- quite lengthy.

Printing is our nation's sixth largest industry. While it is currently in general good health, the influx of foreign printed books, catalogues and other printed materials prior to the expiration of the Manufacturing Clause is a clear harbinger of what can be expected to occur with printed materials now that the Manufacturing Clause has been allowed to expire.

Low-wage countries which have well-established printing industries -- such as the Peoples' Republic of China, Taiwan, Malaysia, Hong Kong, and Singapore -- present a current threat to our domestic industry's continued ability to compete. Their low wages offer a tempting opportunity to U.S. or foreign publishing houses to contract to print materials in these countries for importation to the U.S.

This had already been the case with printed materials exempt from the Manufacturing Clause while that Clause was enforceable. (In fact, almost all "coffee table" books have been printed overseas -- many in the countries named above -- because the color separation process required for four-color printing is highly labor-intensive.) Now that the Manufacturing Clause cannot be enforced, it is probable that other types of books and printed materials will be printed overseas and imported to the U.S., which is the world's largest market for printed materials.

One method of assuring that there is a reasonable measure of fair trade in printed materials is to make existing U.S. trade law relief provisions more effective in combatting the expected influx of foreign printed materials into our domestic market.

As noted above, actions under sections 301 and 337 are both remedies available to American labor and industry seeking relief from unfair trade practices. However, the purpose and effects of the two petition processes are quite different.

Basically, 301's are intended to be used when a U.S. industry or labor union encounters foreign import restrictions which prevent or restrict American industry's ability to sell in or export to that foreign market.

337's have quite a different purpose. They are designed to be used when unfair acts related to the importation of foreign articles into the U.S. (or their sale in the U.S.) is injuring or posing the threat of injury to a U.S. industry. The present injury test requires a finding that the act has destroyed or substantially injured an industry in the U.S. Current comprehensive trade law reform legislation now before this Committee would either relax or eliminate the injury test.

The key difference is that 301 is a remedy for unfair acts hindering **U.S. exports**, while 337 is a remedy for unfair acts related to **U.S. imports**.

As noted above, the primary threat to the U.S. printing industry comes from low-wage countries with established printing industries. To the extent that any of these low-wage countries fails to respect international worker rights, it is exploiting its workers to achieve unfair penetration of the U.S. market.

The Graphic Communications International Union believes that any exploitation of workers by foreign countries in order to obtain an economic advantage in penetrating the U.S. market constitutes an unfair trade practice.

Because our concern with labor rights relates to imports, relief under section 337 is an appropriate vehicle for the worker rights standard.

For purposes of this comparison, the relevant standard for applying Section 301 is a presidential determination that a foreign country is engaging in acts or policies which are unjustifiable, unreasonable, or discriminatory, and which burden or restrict U.S. commerce. Efforts to add international worker rights to 301's are directed at adding the failure to respect those rights to the definition of "unreasonable."

As an alternative to the finding described in the preceding paragraph, the USTR can find that a 301 action is necessary because a foreign country is following a policy or practice that is injurious to U.S. trade and inconsistent with our trade agreements.

For 337's, the basic standard is "unfairness." Our proposal adds the failure to respect international worker rights to the definition of unfairness.

For printing -- and for a large number of other industries -- attaching worker rights to 337's may prove to be of more practical use than adding them to 301. This is because -- as noted above -- 337's are basically actions to retaliate against foreign unfair trade practices related to imports while 301's are actions to retaliate against foreign trade barriers that limit our ability to penetrate export markets.

The real threat to printing and its employees comes from low-wage countries with established printing industries. Because these countries do not have tariff barriers to U.S. printed materials, Section 337 is a more appropriate remedy to deal with unfair competition from these countries.

First, under existing law, 337 can be used if any of these countries is engaged in copyright pirating. Both the Senate and House trade bills strengthen these anti-pirating provisions as they apply to copyrights, patents, trademarks and mask works.

Second, adding worker rights to 337 helps to bring this provision of law back to its original purpose of providing trade relief for unfair foreign trade practices.

Prior to 1974, most of the complaints filed under section 337 alleged infringements of U.S. patents. By the late 1970's, complaints were being filed alleged infringements of copyrights and trademarks. However, there is nothing inherent in the language or legislative history of section 337 which limits the use of this form of relief to patents, trademarks and copyrights. In fact by 1980, complaints were being filed with the International Trade Commission under section 337 which alleged violations having nothing to do with intellectual property rights. For example, the ITC has asserted jurisdiction under this section for complaints and investigations involving such unfair import practices as predatory pricing as well as a foreign manufacturer's alleged practice of "passing off" its products as those of a U.S. manufacturer's.

Petitions under 337 go to the International Trade Commission, which has nine months within which to make a determination regarding the existence of an unfair trade practice. This period can be extended in "complicated cases." Once the ITC makes its determination, the President has 60 days in which to disapprove the determination.

An affirmative determination by the ITC will usually mean that the foreign products which are causing the injury will be excluded from importation or sale within the U.S. Unlike 301 remedies -- which can result in retaliation against unrelated imports, but allow entry of the offending product -- the usual 337 remedy is an embargo against the offending product. From labor's standpoint, this would be an appropriate remedy.

With international worker rights in 337, a complainant could block products of unfairly treated workers, rather than allow entry of the offending product in exchange for some unrelated retaliation.

The Graphic Communications International Union proposes to add to the definition under section 337 of "unfair methods of competition and unfair acts in the importation of articles" the following language:

> **"( ) to import an article into the United States which has been produced in a country which has not taken steps to afford internationally recognized worker rights, as referred to in section 502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4)) to its workers."**

This proposed amendment offers a complainant the opportunity to assert a violation of international worker rights standards (as those standards are defined in current U.S. law) as an unfair trade practice under section 337. It in no way affects a party which bases its complaint on any other unfair trade practice which would come within the ITC's jurisdiction under this section. In addition, the language of the proposed amendment mirrors the international worker rights language adopted by Congress for determining whether a foreign country is entitled to the benefits of the Generalized System of Preferences (GSP).

The proposed amendment provides the U.S. printing industry (as well as other domestic industries) an enhanced method of obtaining trade relief from unfair practices in the importation of products to the U.S. It is a trade remedy which would be part of U.S. trade laws and would not violate our GATT obligations.

The Graphic Communications International Union urges Congress to adopt this amendment as a reasonable proposal which will improve our nation's international fair trade policies.

STATEMENT OF CHARLES D. FERRIS
for the
HOME RECORDING RIGHTS COALITION

on Senate Bill 490

April 21, 1987

Mr. Chairman and members of the Committee, my name is Charles D. Ferris. I am an attorney in Washington, D.C. with the firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. On behalf of the Home Recording Rights Coalition ("HRRC") I thank you for inviting me to submit this statement as to why Senate trade legislation should not include any provision banning or crippling digital audio tape recorders ("DATs").*/

The HRRC, since 1981, has been a broadly based group of companies, organizations, and people. Over the past five years, here are just some of the people who have testified for the Home and Audio Recording Rights Coalitions: John Roach, Chairman and President of Tandy Corp.; Jack Battaglia, General Manager, Memtek Products (makers of Memorex brand tape); Jack Wayman, Senior Vice President, Electronic Industries Assoc.; Fr. Robert McEwen, Chairman, Consumer Recording Rights Committee; Oral Miller, President, American Council of the Blind; Jim Ritchey, songwriter and musician, Greensborough, North Carolina; Scott Graves, audio retailer, Woodstock, Vermont. In opposing various measures that would have banned, taxed, or crippled new consumer recording products, these witnesses have had a common theme: consumers have, and deserve, the right to purchase new consumer home recorders.

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*/ The Home Recording Rights Coalition includes companies that are involved in the manufacture, sale, and distribution of audio cassette recorders and audio tape, and related equipment. They include Alpine Electronics Corporation of America; Ampex Corporation; BASF Systems Corporation; Curtis Mathes; Fuji Photo Film USA, Inc.; General Electric Company; Hitachi Sales Corporation of America; International Jensen Inc.; JBL Incorporated; JVC Company of America; Kenwood Electronics; Matsushita Electric Corporation of America; Maxell Corporation of America; N.A.P. Consumer Electronics Corporation; NEC Home Electronics (U.S.A.) Inc.; Sears, Roebuck & Co.; Sanyo Manufacturing Corporation; Sony Corporation of America; Sansui Electronics Corporation; Tandy Corporation; TDK Electronics Corporation; 3-M Company; TEAC Corporation of America; Toshiba America, Inc.; Yamaha Electronics Corporation.

Membership includes many prominent trade associations and consumer groups, such as the American Council of the Blind; the Association of General Merchandising Chains; the Car Audio Specialists Association; the Consumer Recording Rights Committee; the Electronic Industries Association; the International Society of Certified Electronic Technicians; the National Association of Retail Dealers of America; the National Retail Merchants Association; the National Association of Television and Electronics Services of America; the National Electronic Sales and Services Dealers Association.

Summary of My Statement

It is wholly inappropriate, we believe, to embroil the question of the availability of DAT in the trade debates. For the last five years, the issue of home taping has been part of a dialogue between the American consumer and the recording industry. It has nothing to do with trade. Congress should address DAT and home taping on their own bottom, not in the context of appending a sector- specific -- and, in the case of DAT, product-specific -- provision to broad trade legislation.

On the merits, there is no reason, or justification, for putting the DAT or the consumer on trial, especially with banishment as the remedy. The last revolutionary consumer recorder, the VCR, also was subject to attempts to ban it before it could gain a foothold. Look at how strained and remote the original objections to the VCR seem now. The fact is that new recording products become established because of their recording capabilities, but wind up establishing even greater markets for new prerecorded material.

The purported reasons for indicting the DAT, and home taping, simply don't stand up to scrutiny. The DAT does not raise any new or different home taping issues; it does not allow "perfect digital clones" to be made. Home taping itself does not cause the sort of sales displacement that the recording industry claims; on balance it may even be beneficial. And it is the recording industry's own efficiency, and supply constraints caused by unexpectedly high demand for compact discs, that have held down the level of the industry's new releases. In fact, the major record companies are setting new records for sales and profitability.

Congress should look a lot more closely at the particulars of the campaign against the DAT. It should examine the apparent boycott, by record companies, of releases in the DAT format. It should explore whether record companies can and will issue, even at higher prices, versions of new records, tapes, and discs that lack the CBS copy coding, in addition to the encoded versions. And the Congress should explore and understand the poverty of the efforts that have been made to confuse private, consumer home taping with the altogether different subject of commercial piracy.

Congress should also ponder carefully the implications of mandating a particular technological limitation, unrelated to safety or welfare, for new consumer products. Indeed, the emerging evidence of the distortive effects of the encoding system that would be mandated by this legislation should be seen as an early and bad omen for this sort of approach.

The DAT and the Consumer, on Trial

The provisions that would ban DAT from the American market constitute a trial of DAT with a mandatory death sentence. Is the combination of the American consumer and the DAT so dangerous to themselves or others that they must be kept apart by the force of law?

The American consumer has supported both the hardware manufacturers and the recording industry magnificently. In return, consumers have received, for their private, noncommercial use, the benefits of continued advances in technology. There is no reason to choose the door of the DAT as the place to stop, limit, or define technology. This sort of legislation is extraordinarily dangerous, both for its own effects and as precedent. It should raise some fundamental concerns.

Why a Trade Issue?

Congress should not rush to consider DAT and home taping to meet a hastened calendar for trade legislation. The questions raised by home taping more generally ought to be considered on the merits. The copyright issues raised by the DAT would be no different if the first DATs were to be manufactured in Michigan or Texas. Above all, there is absolutely no need to act precipitously now, even before the DATs are in the U.S.

Why Pick on DAT?

There is no principled reason to single out the DAT. What if television had been banned, on the basis that TV sets were not yet on the market? Nothing about the DAT merits such treatment. The DAT is a better tape recorder, but consumers will not use it any differently from the way they use their recorders today -- to tape music they have purchased for their personal enjoyment. The recording industry should be made to demonstrate precisely why the DAT should be treated in isolation from the rest of the debate over home taping. They cannot do this now because no DAT recorders are as yet available to the public. Once DATs are available, the present objections will, in retrospect, look insubstantial. The DAT doesn't pollute and it doesn't explode. It simply uses the basic recording method of a VCR and the basic electronics of a compact disc ("CD") player to play digital tapes that are the sonic equal of CDs.

Why Recorders Must Record

The anti-taping chip required by the DAT proposals would effectively kill the DAT as a new format. For example, when the VCR was first offered, at prices exceeding $1,000 (the same range in which DATs would be first offered), would anyone have bought it if it lacked the ability to record? Indeed, would anyone have bought audio home tape decks if they lacked the ability to record?

Common sense, and consumer surveys, teach us that consumers buy new types of recorders to have the freedom and flexibility to make their own tapes, but they use them primarily to play prerecorded tapes. The reason is that movie studios and recording companies are much more efficient in packaging and distributing movies and music than consumers, themselves, will ever be. Of course people make a great number of recordings at home, too. With VCRs, they are primarily for "time shifting" of broadcasts. With audio recorders, recordings are primarily to edit, preserve, and make portable the music the home taper has already bought.

Today, Hollywood admits that the VCR is a friend. Because of the VCR, there is a $5 billion market in prerecorded video cassettes. And while movie attendance is rising, the box office has been surpassed by home video as the movie industry's primary source of revenue. The VCR has more than justified its acquittal.

Why Is the DAT on Trial?

In light of the favorable experience with the VCR and other new consumer recording products, why are there efforts to put the DAT in trade legislation? It faces three charges, none of which stands up to scrutiny. Charge (1) is that the DAT is somehow different from other recorders when it comes to consumer home taping practices. Charge (2) is that consumer home taping itself should be limited, because allegedly it costs the recording industry $1.5 billion per year in displaced sales. Charge (3) is that home taping has caused the recording industry's new releases to decline 43% since the peak year of 1978.

The DAT Will Not Be Used Differently From Existing Recorders.

Charge (1) is simply untrue. DAT recorders will not be used differently from other recorders; they will principally be used for playback and for some home taping. The proponents of anti-DAT legislation have the burden of proving the contrary, that owners of DAT recorders will abuse their right to tape, or engage in commercial piracy. But the DAT, like other recorders, cannot make "master quality" recordings of prerecorded music. All it can do is record such music through its analog input, to make a very good recording, but a recording that is nothing like a "digital clone."

There is no reason whatsoever for the Congress to assume that DAT recorders are somehow illegitimate. Under both the 1971 legislative history accompanying the Sound Recording Act and case law, private, consumer home taping is legal. No lawsuit has ever been brought claiming that audio home taping, by consumers, is illegal. There is no reason at all to treat the DAT any differently from other home taping devices.

Home Taping Does Not Have the Sales Displacement Effects Claimed by the RIAA.

Congress should not lose sight of the fundamental truth about home taping, whether it involves a boom-box, a Nakamichi, or a DAT -- most home taping of prerecorded music is of selections from albums that the taper already owns. From this fundamental truth, it should be obvious that the RIAA's analyses, which are used to show that home taping causes a net displacement of sales of prerecorded music, must be suspect. They are, in fact, both dubious and inconsistent.

The claimed $1.5 billion loss each year due to home taping comes from a study by Dr. Alan Greenspan conducted in 1982 which is based on faulty premises, employs unsatisfactory methodology, and fails to account for the tremendous economic benefits that taping technology has delivered to the recording industry. The inadequacies are too many to repeat in full here,* but let me list a couple of critical problems with the Greenspan analysis.

First, relying on a study done by Warner Records in 1982, Greenspan assumes that 75% of the total blank tapes sold in the U.S. were used to tape copyrighted music. Not only does the Warner survey grossly exaggerate the amount of home taping which involves copyrighted music (the Yankelovich survey** found that less than half of all home taping involved copyrighted music); it also (by looking only at households) completely ignores the vast amount of blank tape sales to institutional purchasers such as government, business, industry, colleges and schools. To assume that 75% of blank tape sold is used for home taping is absurd on its face.

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* For example, ever since 1982, the recording industry's coalition has cited the work of Dr. Greenspan and others to prove that home recording pushes the price of prerecorded records and tapes up. On the very same occasions, Dr. Greenspan himself has testified that home recording pushes the price of prerecorded records and tapes down. See also Nina W. Cornell, "Critique of 'Home Taping in America: 1983, Extent and Impact,' " Hearings on S. 31 Before Subcomm. on Patents, Copyrights and Trademarks, 98th Cong., 1st Sess. 419 - 435 (October 25, 1983); letter to Hon. Charles McC. Mathias, December 2, 1983.

Second, Greenspan uses a 42.6 multiplier to determine how many of those blank tapes containing music actually displaced purchases of records. Again this number is based on a survey done by the recording industry and was created by posing hypothetical questions to home tapers about purchasing behavior. This kind of hypothetical question is useless for determining displaced sales for several reasons. First, because most taping is of selections, there is no way the taper could have bought an album comparable to what he or she taped. Second, the taper often answers that he "would have purchased the album" because, in fact, he already has. Third, people will more willingly spend hypothetical dollars than real ones. Again, the critical figure relied upon by Greenspan is completely unreliable.

At bottom, Greenspan's analysis is so far off base that the $1.5 billion figure might as well have been pulled out of air. When one adds the greatest omission -- the failure to account for the benefits of the recording technologies -- the $1.5 billion could as well reflect gains, rather than losses, from home taping. As Tom G. Palmer observed in the March 24 Wall Street Journal, magnetic tape has become part of a system of portable and automotive players, centered around the home tape recorder. This system exists only because home recorders exist. It is virtually undeniable that the Walkman, the car stereo, and the home tape deck itself have combined to greatly enhance the demand for prerecorded music. If all of these tape recorders, and the tape players they have spawned, could be

** Why Americans Tape, survey by Yankelovich, Skelly & White for Audio Recording Rights Coalition, 1982.

collected from consumers and dropped in Lake Mead, would the recording industry really be better off?*

Home Taping Has Not Caused the Decline in New Releases.

The third charge is that home taping, by supposedly displacing record sales, has caused industry new releases to decline 43% since the peak year of 1978. But in its trade press, the industry has acknowledged, time and again, the real reasons new releases are down: in 1978 the industry was flamboyant, short-sighted, and totally unprepared for the downcycle that (like many other industries) it experienced from 1980 through 1982.

The Recording Industry Is Enjoying New Efficiency and Record Profitability

One finds a guide to the true state of the recording industry in the March 28 issue of Billboard. On the page (p. 3) on which one headline says, "House Subcommittee OKs DAT Copy-Code Provisions," another headline says: "Polygram's Acts Bring in Banner Year; Global Profits Soar to $120 Million in '86." The article says 1986 was "the best-ever 12-month period in the company's history," and that Polygram has joined WEA and CBS in having annual grosses over $1 billion and profits over $100 million. It then quotes London-based Polygram senior executive vice president Leonard Fine as to why his company is so profitable:

> Ever since the days of our discussions with WEA [a merger blocked by U.S. antitrust authorities], we've been going through a major restructuring process. ... We've lowered our break-evens and substantially reduced our whole infrastructure cost.
>
> We're leaner, better-staffed, and better-managed. All our operations in 27 countries have been trimmed down to size so as to work more effectively ....

Mr. Fine said that the 1986 results are "a sustainable profit; it's not just a flash in the pan."

I have also attached to my statement an article detailing the extraordinary results that have been achieved by the CBS and WCI (Warner) record groups in 1986. The Billboard article refers to the 1986 CBS results as "the highest revenues and income [ever] generated by a record company," and says that Warner's three domestic labels "set a new collective sales record." In citing these results, we are by no means implying that record companies are too rich to be allowed to petition the Congress. What we are suggesting is that the very factors cited by the recording industry as indicating problems due to home taping reflect, in reality, efficiencies that have carried the major labels to new levels of profitability.

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* As Tower Records founder Russ Solomon put it, "[I]f you didn't have the home recording business, you wouldn't have Walkman machines. In other words, the tape technology that came out of the recording machine resulted in the portable playback machine and the automobile machine, which created an emormous market for us." M. Goldberg, "The Wisdom of Solomon," Rolling Stone, Nov. 22, 1984 at 39.

New Releases Are Constrained by the Shortage of CD Stamping Capacity.

In addition to the record industry's new self-discipline, the other major factor affecting new releases has been the shortage of compact disc stamping capacity. Ever since this format was introduced by the same companies that manufacture tape recorders, the recording industry has consistently underestimated the demand for it. New stamping plants, most of them built by hardware manufacturers rather than record companies, have been unable to catch up with demand. Accordingly, recording industry executives have used the available capacity to issue major releases, rather than using the same, limited capacity to issue a greater number of more minor releases. In other words, the recording industry's decline in new releases since the peak in 1978 is much more a matter of supply considerations than of demand.

The Facts About A Prerecorded Tape Boycott, Dual Inventories, and Commercial Piracy Should be Fully Developed

The Apparent Boycott of Prerecorded DAT Releases

It is ironic that we're beginning to hear objections to the DAT on the basis that insufficient provision has been made for production of prerecorded DAT cassettes. This is the old story of shooting your parents and applying for relief as an orphan. The DAT was designed, from the beginning, as a format emphasizing prerecorded music; machines for the manufacture of prerecorded DAT tapes have been developed and will be available. It has been executives of some of the major record companies who have said they would never license their titles for release as prerecorded DAT tapes.

One such executive, in a public speech, referred to fears that the industry "wall" in this respect might be breached, and admonished another major company for signing a distribution agreement (not including DAT) with a smaller company that had announced it intended to issue albums in the DAT format. Attached to my statement today are reports from the trade press suggesting that such a boycott is under way, indeed, with the assistance of at least one major retailing chain.

I am sure you will agree that the Congress of the United States should not be a vehicle for helping major record labels avoid competition from smaller labels. In a sense, the avoidance of such competition is what this legislation is principally about.

Are Record Companies Sincere About Offering Encoded and Unencoded Inventories? Will Encoded Discs Be So Labeled?

The recording industry has suggested, but not promised, that record labels might issue a separate inventory of unencoded recordings, at a higher price, to give people the "privilege" of taping their own records. When this idea was first publicly explained to leading record retailers, in the speech to which I have just alluded, many of them reacted with shock and horror. (Articles quoting their reactions are attached to this statement.) A separate inventory of every record, tape, disc, and prerecorded DAT tape appears unsustainable -- there might be two versions of each Bruce Springsteen album, but only at the expense of carrying any version of a more minor artist's release. In my judgment, record retailers simply do not believe that the industry will issue dual inventories of more than a few releases, and I think they are correct. Moreover, given the criticism that is now emerging of the effects of the CBS encoding, is it even clear that the industry will label or reveal which albums it has encoded?

Piracy Is Simply Irrelevant to DAT

The other notion that the recording industry has floated is that the DAT somehow will make commercial piracy more of a problem than it is today, and that the CBS chip somehow would curtail piracy. This is ridiculous on its face. Piracy is the unauthorized copying of works and their subsequent commercial sale in competition with the original. It is already, and should be, a criminal offense. Once a consumer, knowingly or unknowingly, buys a pirated tape, all he needs to to is play it back. He doesn't need a recorder of any sort. Pirated tapes are made by professionals, who could easily bypass the CBS chip. Indeed, if the record companies really do intend to issue unencoded versions of each release, all the pirate has to do is copy from the unencoded version.

Our coalition, from its inception, has asked the Congress to distinguish between private, home recording by consumers, for noncommercial purposes, and piracy, which is done for completely different purposes and has completely different effects. We don't think the recording industry does anyone a service by suggesting that home tapers, who are its best customers, who buy the greatest numbers of records, tapes and discs, are pirates because they tape to preserve their albums or make them portable.

The DAT Legislation is Unwise and Uncalled-For

The anti-DAT legislation would kill a new technology in its cradle. We believe there is no reason to stop, limit, or restrictively define technology, and even less justification for the federal government doing so for reasons other than health, safety or public welfare.

There is no precedent for the U.S. Congress to ban a new product on any other grounds. Congress should not depart from this very wise precedent with this anti-DAT, anti-technology legislation. No matter how any package of bills is labeled, the anti-DAT provision is the very opposite of "competitiveness." We urge you to examine this subject very thoroughly and in detail; as you do, the anti-DAT legislation will become even less defensible and more outrageous as public policy action.

Thank you.

April 21, 1987

COMMENTS OF THE ITC TRIAL LAWYERS ASSOCIATION* ON PROPOSED AMENDMENTS TO SECTION 337 OF THE TARIFF ACT OF 1930 INVOLVING UNFAIRLY TRADED IMPORTS

SUBMITTED IN CONNECTION WITH THE SENATE FINANCE COMMITTEE'S HEARING ON MAJOR TRADE BILLS BEGINNING ON APRIL 2, 1987

SUMMARY OF ASSOCIATION POSITION

A number of bills** have been introduced in the 100th Congress which would radically amend the provisions of Section 337 of the Tariff Act of 1930 ("Section 337"). The Association has studied and analyzed the amendments proposed in these bills and opposes enactment of certain of the key amendments as now drafted.

While the Association agrees with the apparent objective of these bills to make Section 337 more effective and efficient, and indeed agrees with many of the specific provisions, the Association believes that the bills as a whole do not accomplish their objective. To the contrary, some of the amendments, if adopted, would severely interfere with the effectiveness of Section 337 and make it less useful in protecting U.S. intellectual property interests. The Association believes strongly that before any amendments are made to Section 337 affecting its use for years to come, the appropriate legislative committees of the Congress should thoroughly consider whether the purported gain from certain proposed amendments is worth risking the future effectiveness of the statute as well as other adverse effects on U.S. intellectual property rights.

The Association specifically opposes the elimination of the requirement in Section 337 that some economic harm be demonstrated to a U.S. industry in patent, trademark, copyright, and mask work cases. The Association proposes instead that a rebuttable presumption of injury be incorporated into the law, which presumption would address concerns raised about the injury requirement and yet help to avoid many of the problems associated with an elimination of the injury requirement.

The injury requirement has rarely been determinative of whether relief will be provided under Section 337, and in the few cases where it has been, relief from unfair practices was available in the federal courts. Eliminating the injury requirement:

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* The ITC Trial Lawyers Association ("Association") is a professional organization of more than 300 lawyers who practice before the U.S. International Trade Commission ("ITC"). The Association has as its purpose the advancement and improvement of the operation of the international trade laws, and, in particular, Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a law which permits the exclusion from entry into the United States of articles which are unfairly traded and which injure a U.S. industry. The Association is a national professional association whose members are attorneys, including a large number of patent attorneys, representing U.S. manufacturers and industries, as well as foreign manufacturers and importers of foreign articles, and which includes outside counsel to corporations as well as in-house counsel.

** Among such bills are S. 490 (section 401), H.R. 3 (section 142), and H.R. 1154 (section 5009) which was proposed by the Administration.

1. would subject Section 337 to needless opposition because of its inconsistency with our international trade obligations (particularly the General Agreement on Tariffs and Trade ("GATT")), resulting in increased challenges to Section 337 actions, retaliation against U.S. exports, and increased disapproval of relief by the President following affirmative ITC decisions, thus making relief under Section 337 unpredictable and less useful;

2. would interject Section 337 into the upcoming multilateral trade negotiations and interfere with or prevent accomplishment of U.S. intellectual property goals for such negotiations, such as conclusion of an anticounterfeiting code;

3. would increase duplicative litigation by encouraging unsuccessful parties before the ITC to retry the issues in the federal courts or, having failed in the courts, retry the issues at the ITC.

4. and, as noted by former Chairwoman Stern of the ITC in her past testimony before the House Judiciary Committee, would (along with the elimination of the domestic industry requirement) expand the jurisdiction of the ITC far beyond international trade matters and turn the ITC into an international patent court.

The Association believes the adverse effects of eliminating the injury requirements in Section 337 outweigh the supposed benefits.

The Association also opposes the elimination of the need to demonstrate the existence of a domestic industry under Section 337 in patent, trademark, copyright, and mask work cases. Section 337 was enacted to protect an established, or about to be established, U.S. industry from unfair trade practices. Why should Section 337 be available to protect an intellectual property owner's foreign industry? Removal of the domestic industry requirement in patent, trademark and copyright cases would also have the anomalous result of permitting foreign companies with no economic stake in plants or equipment in the United States to petition the ITC to prevent U.S. companies from importing a component of a product for assembly in the United States. Indeed, the proposed amendments would also permit a foreign company with no economic presence in the United States to use the ITC to prevent another foreign company which also has no economic presence in the United States from importing an article.

OVERVIEW OF THE CURRENT LAW

Section 337 of the Tariff Act of 1930 has not changed in substance since its enactment. It declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in the sale of an imported article in the United States, the effect or tendency of which is substantially to injure an efficiently and economically operated U.S. industry, or to restrain or monopolize trade or commerce in the United States. A violation of this law usually leads to exclusion from entry into the United States of the articles connected with the unfair trade practice. Such an exclusion order normally covers not only articles of persons over whom personal jurisdiction existed and who participated in the proceedings to determine violations, but also articles of importers and foreign manufacturers who never participated in the proceedings. Such an order can apply to the articles of persons who did not start to produce the articles until well after the order was issued. As such, it is an extraordinary remedy which allows extremely broad relief to a holder of intellectual property rights or some other individual harmed by an unfair trade practice.

Section 337 has operated satisfactorily in the past decade to accomplish the intent of Congress. There have been over 250 cases instituted under Section 337 since its amendment in 1974. The vast majority of these cases have been based on allegations of infringement by imports of U.S. intellectual property rights, i.e., patents, trademarks or copyrights. Seventy percent of the completed cases were resolved in favor of the domestic complaining party by virtue of the entry of an exclusion order, a consent order or a settlement agreement. The foregoing is the case despite the fact that the law now requires injury to a U.S. industry by the offending importations. In fact, this requirements has existed in Section 337 since the adoption of its precursor statute in 1922. In only two (2) contested cases out of over 225 completed cases under Section 337 since the 1974 amendments has the complaining party been unsuccessful in obtaining relief by reason of the injury requirement. (No injury has been found in other cases, but always accompanied by other findings which would have prevented relief no matter what the injury finding.) Such a record is not an indication of a major impediment to relief.

THE PROPOSED AMENDMENTS

I. THE INDUSTRY REQUIREMENT

Some bills seek to amend Section 337 by eliminating the requirement in cases concerning infringement of a patent, trademark, copyright, or mask work, that there be an industry in the United States or that the establishment of one is being prevented. Under the amendments the existence of the domestic industry would be established simply by ownership of a valid U.S. patent, copyright, trademark, or mask work. The Association opposes this provision.

These amendments, along with the amendment eliminating the injury test, provide that all one would have to show to establish a violation of Section 337 is that the unauthorized imported article infringes an intellectual property right. This must be viewed against the fact that exclusive jurisdiction for the determination of patent and copyright cases resides in the U.S. District Courts pursuant to 28 U.S.C. §1338(a). Legislation which amended Section 337 in 1974 clarified the ITC's practices involving infringement of a U.S. patent. The legislative history makes it clear that patent validity determinations of the ITC are properly not accorded res judicata effect because the ITC has no jurisdiction to determine patent validity, except to the limited extent necessary to decide a case otherwise properly before it. See S.Rep. No. 93-1298, supra, 1974 U.S. Code Cong. & Ad. News at 7239.

Under current law, in order for a case to be properly before the ITC, it is necessary to establish that there is an efficiently and economically operated domestic industry facing unfair acts of importation which have the effect or tendency to substantially injure that industry, or prevent its establishment. The proposed amendments, by removing this requirement, will effectively destroy the exclusive jurisdiction of the U.S. District Courts to determine matters affecting patent and copyright infringement and validity and turn the ITC into an international patent court where the only requirement for jurisdiction will be ownership of a U.S. patent or copyright and an act which is an infringement thereof.

Section 337 is an international trade law, and it is appropriate that the extraordinary relief available under Section 337 should benefit a U.S. industry. In short, why should extraordinary relief be available to a holder of intellectual property or his licensees unless he or his licensees have formed a U.S. industry or intend to do so and have taken steps to that end. If there is no U.S. industry, then relief under Section 337 would benefit an intellectual property owner's foreign interest; relief of a satisfactory nature for the property holder himself could be achieved by an action in the federal district courts -- loss of royalties, effects on R&D, and other injuries can be fully compensated in such an action. There is generally no need or justification for use of Section 337 unless the interests of a U.S. industry, which include employment and creation of wealth and which are broader than the interests of an intellectual property owner, are at risk.

Further, the proposed amendments will open the floodgates of litigation before the ITC to, inter alia, foreign companies. Elimination of the requirement of an industry in the United States would mean that an investigation by the ITC could be initiated upon receipt of an allegation that a valid United States patent, trademark, copyright, or mask work has been infringed. The ITC would become available not only to substantially injured or threatened U.S. industries but to any owner of U.S. intellectual property without regard to whether it has an established industry in the United States or is about to establish an industry in the United States. Accordingly, a foreign company whose only nexus to the United States is ownership of a valid U.S. intellectual property right could sue a U.S. company which was importing a component of a product for assembly in the United States or the complete product itself. For example, a Japanese company which owns a United States patent could complain of unfair trade practices before the ITC if a U.S. company manufactures products in Hong Kong and then imports them into the United States, even though that Japanese company has no established industry in the United States. Consider the even more anomalous situation in which a Japanese company with no economic presence in the United States seeks to have the products of a German company, which also has no economic presence in the United States, excluded.

Since foreign companies have expressed an interest in using Section 337 in the past, an influx of complaints on behalf of foreign interests can be expected. With these changes in Section 337, foreign concerns would not only have an incentive to burden the U.S. administrative process to their economic advantage, but they would be given the tools to do so. Consider that, of the eleven companies having the most U.S. patents granted in 1984, seven were foreign. In addition, forty-two percent of all U.S. patents issued in 1984 were issued to foreign companies (USA Today, Money, p. 1, Sept. 14, 1985; N.Y. Times, Sept. 24. 1985); by 1986, this figure was 45% (International Trade Reporter, p. 498 (April 8, 1987). The increased case load will require major increases in the staff of the ITC.

If the proposed amendments were to become law, investigations would no longer involve the economic expertise of the ITC which is central to its present jurisdiction over trade cases. There would no longer be a need to determine whether an industry exists, and no longer be a need to determine whether the acts of importation or sale have an effect or tendency to cause harm to a domestic industry. The only issues to be decided by the ITC would be validity and infringement of the intellectual property right owned by the complainant. The ITC has no special expertise to handle such judicial issues. In fact, only one of the present Commissioners is a lawyer, and in recent history, the Commission has been comprised of a majority of non-lawyers.

Persons who now choose to proceed against foreign importers in the ITC do so because of the extraordinary remedy which can be obtained. The ITC can issue an order that bars not only the goods of a respondent, but also of those who never participated in the proceedings and even those who first produce the goods long after the decision was rendered. This in rem jurisdiction is much broader than that which can be obtained in a Federal District Court.

One important effect of the proposed amendments will be to deny respondents access to Article III courts which currently have exclusive jurisdiction over issues involving patents and copyrights pursuant to 28 U.S.C. §1338(a). Respondents before the Commission are denied the right to a jury trial and may not counterclaim for infringement of any of their patents which are being infringed by the complainant. Thus, the respondent whose patent is being infringed by a complainant can seek relief only in a federal district court, while the complainant may obtain an exclusion order on an abbreviated time schedule, perhaps removing the respondent as a competitor in the U.S. market.

There is serious doubt concerning the value of having the ITC -- an administrative agency not equipped with any specific expertise in the area of intellectual property rights -- invest valuable time and resources into investigations whose sole purpose will be determination of intellectual property issues. By proposing to eliminate the requirement of injury to an industry in the United States, the amendments seek to fundamentally alter the purpose for which Section 337 was enacted, namely, as an international trade statute to protect an established or about to be established U.S. industry from harm.

II. THE INJURY REQUIREMENT

A. General

The proposed amendments would eliminate the injury requirement from Section 337 in patent, trademark, copyright, and mask work cases. The Association opposes such amendments. It is the Association's position that a test of economic harm should remain in Section 337, and the Association supports a rebuttable presumption of injury.

Elimination of the injury criterion in the statute would raise anew questions of whether Section 337 is consistent with United States obligations under international agreements, and in particular the GATT. The status of Section 337 under the GATT is not secure as it now stands. Little comfort can be derived from any past consideration of Section 337 by the GATT contracting parties. The European Communities has recently asked GATT for a dispute settlement panel to hear its challenges to section 337 as applied in the Aramid Fibers investigation. These renewed questions would occur in a context where the United States no longer enjoys "Grandfather" immunity (see discussion below).

Any renewed focus on Section 337 actions taken against other countries' exports to the United States will likely result in demands for retaliation against U.S. exports. This is indeed the crux of the Aramid Fiber matter being pursued by the European Communities. Borrowing on U.S. practice under Section 301 of the Trade Act of 1974, if countries find Section 337 inconsistent with U.S. GATT obligations, retaliation against the United States is certainly a real alternative.

Renewed consideration of Section 337 resulting from the proposed amendment will also further interject Section 337 into the upcoming trade negotiations, which are likely to include serious consideration of important intellectual property issues. The European Communities has already indicated that elimination of the injury requirement in Section 337 will make it difficult to achieve broad agreements on intellectual property matters. Indeed, Ambassador Denman's letter of April 8, 1987, to the Senate Finance Committee made this unequivocably clear. Further, countries not interested in achieving positive results will use the amendments to Section 337 to delay and obfuscate. Particularly vulnerable to this sort of tactic will be the anticounterfeiting code. Developing countries can be expected to use an amendment to Section 337 as a foil against consideration of the code and use it to influence even developed countries to postpone consideration. The chances for an anticounterfeiting code would accordingly be substantially diminished.

Further, the question of injury will be and should be considered in Section 337 cases even if the ITC does not consider injury in its violation investigation. There is no doubt that the extent of injury being experienced by a U.S. industry will become an important factor in the Commission's determination of whether it is in the U.S. public interest to grant relief. This mandated consideration is not subject to adjudicatory proceedings, so the opportunity will exist for relatively untested arguments on injury to be made. These arguments, which now are made subject to cross-examination and discovery, with an opportunity for judicial review, will be made behind closed doors. Further, there is no doubt that foreign governments and companies will argue that the President should disapprove an action of the Commission because the intellectual property owner has not been injured and has relief available in the federal district courts and that, if the United States takes action, it will be faced with an international challenge under GATT and be subject to retaliation. Such challenges may interfere with general U.S. trade relations without benefitting any industry in the United States. These are powerful arguments which can be made behind closed doors, with no review of the President's decision possible under existing law. The result will be increased uncertainty as to whether relief will be provided under Section 337, which will greatly diminish its effectiveness.

B. International Agreements

As set forth above, Section 337 substantive jurisdiction has remained unchanged for over fifty-five years. In 1973 the Congress considered the elimination of the injury requirement from Section 337. However, the Trade Act of 1974 retained the historical injury requirement. The requirement was retained for two important reasons:

(1) To leave the substance of Section 337 unchanged and therefore not disturb the "Grandfather" status of the section under GATT; and

(2) To make sure that Section 337 remained a trade statute as intended and not be injected into the then pending Mutilateral Trade Negotiations by disturbing the uneasy acceptance accorded Section 337 internationally.

In the half century since its enactment, the only changes in Section 337 were procedural. Indeed, the Senate Report on the 1974 Trade Act, in addressing the amendments in Section 337, stated:

> "No change has been made in the substance of the jurisdiction conferred under Section 337(a) with

> respect to unfair methods of competition or unfair acts in the import trade." (S.Rept. No. 93-1298, 93rd Cong., 2nd Sess., p.194 (Nov. 26, 1974).)

By preserving its substance, the section continued to be consistent with GATT by virtue of the "Grandfather Clause" of the Protocol of Provisional Application (¶ 1(b)). The Protocol insulates legislation in existence on October 30, 1947, which is inconsistent with GATT obligations, from the requirement that it conform to such obligations and in effect permits amendments to such legislation only if such amendments do not change the substance of the existing statute. It was in recognition of the necessity of insuring that the proposed amendments were substantively the same as the provisions existing on October 30, 1947, that the injury requirement was retained. Such a precaution was responsive to the Interim Commission for the International Trade Organization's statement that the Contracting Parties to GATT are "... expected not to enact any new legislation that is inconsistent with it." (GATT Reports 8 (Jan. 1948-Aug. 1949)).

C. The Spring Assemblies Case

Some proponents of the elimination of the injury criterion argue that Section 337 is safe from attack as inconsistent with U.S. GATT obligations based upon the GATT panel decision referred to as the Spring Assemblies case. They assert that Spring Assemblies held that Article XX(d) of the GATT exempted Section 337 actions from the requirement that it be consistent with the provisions of GATT. Such assertions are ill-founded.

The panel decision in Spring Assemblies was referred to the GATT Council for consideration. Absent adoption of a panel report by the Council, the report does not constitute GATT precedent. In the initial consideration of this decision, Canada, the European Communities and the Nordic countries all expressed disapproval of the panel report and urged its rejection, and were joined in part by Japan. The only countries supporting approval of the report were the United States and Australia. No final action was taken at the first consideration.

The panel report was again considered by the Council at its May 1983 meeting. A decision was made to adopt the panel report, but only after it was agreed that the report would, in effect, not be a precedent. As described by the official publication on GATT affairs,

> When the Council adopted the report, it did so on the understanding that it did not foreclose future examination of the use of Section 337 to deal with patent infringement cases from the point of view of consistency with Articles III and XX of the General Agreement. GATT Activities in 1984, at 44-45 (1984).

Based upon the foregoing, if a vote were held in the Council today, it appears likely that Section 337, as it now stands, may be considered inconsistent with the GATT, given the positions of the Council members on their first consideration and their acquiescence in the report only when it was rendered meaningless as a precedent.

D. National Treatment

If Section 337 is not exempted under Article XX(d) of the GATT as necessary to the protection of U.S. intellectual property rights, then consideration of national treatment obligations would occur. The GATT's National Treatment clause prohibits application of laws and regulations to imported products which are less favorable than those applied to domestic products. Because of the greater difficulties that would be encountered by foreign parties in Section 337 proceedings than in Federal District Court proceedings, and because of the dual proceedings which imports face while domestic products are subject to only one proceeding, a violation of the National Treatment clause could arise.

Many of those who rely inappropriately on the GATT panel report in Spring Assemblies also assert that even if the Article XX(d) exemption were not available, there is nothing inconsistent with the operation of Section 337 and with the requirement under Article III of the GATT for "national treatment." The Association believes there is at least serious doubt as to the correctness of this assertion, and certainly many of our major trading partners do not agree with this proposition.

Some persons have argued that the Section 337 amendments on industry and injury are appropriate because it is merely removing criteria under Section 337 which are not required under the domestic intellectual property laws. While it is true that under domestic law proof of an industry is not required and irreparable injury is presumed subject to being rebutted, domestic law proceedings are of a fundamentally different nature than Section 337 procedings. Domestic law procedings are on a party-by-party basis, involving private rights, and are not part of the international trade laws of the United States. Persons who now choose to proceed against foreign producers and U.S. importers under Section 337 in the ITC do so because of the extraordinary remedy which can be attained under this law, which is not available under domestic law. The ITC can issue an order that bars not only goods of the defendant before it, but also of those who never participated in the proceeding and even those who first produced the goods long after a decision in the proceeding is rendered. This extraordianry jurisdiction, the jurisdiction of an international trade law, is much broader than that which can be obtained in a federal district court under domestic law, where a case must be proved against each party. Indeed, it is difficult to imagine that the Congress would even permit the remedy under Section 337 to be applied to U.S. produced goods, as it would give rise to outcries of lack of due process and unfairness. The injury and industry criteria are appropriate under Section 337 because they justify the broad in rem relief available under Section 337 and not under domestic law, and justify the different forum and procedures. They make Section 337 a trade statute, and justify the trade statute remedy.

E. Rebuttable Presumption of Injury

There exists a middle ground between retaining the present injury requirement, which places the burden of proof of injury on the intellectual property owner, and total elimination of the injury requirement. The Association would support amendment of Section 337 to include a rebuttable presumption of injury. Under such a standard, the requisite injury would be presumed unless a respondent named as committing an unfair act was able to demonstrate by substantial evidence a lack of injury or threat of injury caused by the unfair acts, or to demonstrate that such acts were not preventing the establishment of a U.S. industry. The presumption of injury is a procedural change, but it has substantial effects. Essentially, unless a respondent could virtually prove the negative, injury would be found to exist. This would maintain an injury requirement and perhaps substantially avoid challenges and problems internationally, avoid retaliation against the United States, and continue to make section 337 relief effective and predictable. However, such a presumption would limit defenses based upon injury, and the costs and burdens on U.S. intellectual property holders under current law, to the extent they exist, would be reduced substantially and in many cases eliminated.

III. OTHER CHANGES

The Association supports the default provisions of the bills, which permit the ITC to presume facts alleged in the complaint without further evidence, for the purpose of issuing relief limited to a defaulting party after consideration of the public interest.

The Association endorses the provisions of the bills which place the burden of proof upon a petitioner seeking an advisory opinion from the ITC or a modification or rescission of an existing order issued under Section 337, but opposes the provision which attempts to legislate the standard of evidence which may be considered by the ITC in conncection with such an advisory opinion, modification or rescission action.

The Association would be pleased to provide any additional information which may be requested.

Executive Committee
ITC Trial Lawyers Association

K MART CORPORATION
COMMENTS ON OMNIBUS TRADE BILLS
(H R.3, S.490, and S.636)

SCOFFLAW PENALTY PROVISION

Of utmost concern to K mart is the "scofflaw penalty" provision contained in section 872 of H.R.3, as reported by the House Committee on Ways and Means. This provision directs the Secretary of the Treasury to prohibit the importation of any foreign merchandise by any person (firm, corporation, or other legal entity) that was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving fraud or criminal culpability over a 7-year period. Orders prohibiting importations by three-time offenders which are corporations would apply to all officers and principals of the corporation, as well as to any employees or agents of the corporation who were directly involved in the violations concerned. In addition, any person or firm prohibited from importing would also be prohibited from engaging any other person or firm to import on its behalf.

K mart remains vigorously opposed to this unreasonably harsh penalty for several reasons. First, the provision is inherently inequitable and unjust, and would have an especially severe impact on large corporations whose many employees process thousands of separate entries every year. Larger importers would be particularly vulnerable and ultimately forced to contest many more administrative penalty proceedings in the courts in order to avoid the crushing sanction. Under the proposal, every entry which in some manner contravenes a customs law would be treated as a separate violation, no matter how many entries an importer may make over a 7-year period.

Second, the scofflaw proposal is particularly alarming in light of the recent proposal by the Customs Service to redefine "fraud" for customs penalty purposes by eliminating the requirement that an act be "deliberately done with intent to defraud." While we believe this Customs Service proposal disregards explicit indications of Congressional intent to the contrary and hundreds of years of common tort law, it is clear that scofflaw penalties issued on the basis of such "non-intentional" violations would constitute a denial of due process. Corporations, as well as their officers, principals, employees and agents, could be subject to criminal liability as a result of a series of non-criminal (i.e., non-deliberate, unintentional) acts.

Third, the proposal simply ignores the inev[illegible]bility of human error in dealing with complex and often imprecise administrative procedures. Many Customs penalty proceedings stem from technical, often insignificant, violations. The possibility that innocent actions by uninformed or distracted low-level employees could result in major corporations being cut off from their overseas suppliers, at an incalculable cost to stockholders and consumers, demonstrates the unreasonable nature of the sanction. The acts of a single individual could effectively result in a company being driven out of business. Finally, the proposed penalty fails to distinguish between the technical violation and violations resulting in substantial revenue losses, serious evasion of quantitative restraints, or other injury to U.S. or private interests.

The existing criminal and civil penalty provisions are more than adequate to deal with true criminal activity and civil misfeasance and malfeasance.

QUOTA AUCTIONING

K mart vigorously opposes any U.S. government auctioning of import quotas, a proposal that has consistently and rightly been rejected on numerous occasions in the past. Quota auctions would have a substantial negative impact on the U.S. economy by severely disrupting retail businesses forced to participate in such schemes and by raising prices to consumers. In addition, quota auctioning would violate U.S. international obligations under GATT.

While schemes by which quota for imports subject to quantitative limits would be auctioned by the U.S. government may appeal to some economists as a means of generating revenue and of recapturing the quota windfall, the proposals are unsound from a practical standpoint. First, quota auctions would inevitably result in what has been described by the USTR as a "bureaucratic nightmare." Such a scheme would require a substantial increase in administrative costs and bureaucratic involvement.

Second, a system of quota auctions would be highly complex and subject to manipulation, profiteering, and predatory practices. The danger exists that non-economic, panic bidding would force quota prices higher and higher to the ultimate detriment of the U.S. consumer. The development of a secondary, commodity-type quota market driven by broker profits could also result in higher prices. In addition, auctions would result in uncertainties which would be particularly disruptive of retail businesses. Businesses cannot afford such unpredictability.

Finally, quota auctions probably would run afoul of U.S. international obligations under GATT. The measure would certainly be regarded as a revenue raising device and non-tariff barrier by our trading partners. GATT prohibits the imposition of fees above tariff rates except those minimal fees commensurate with services rendered. In addition, Article 3 of the Licensing Code prohibits the use of licensing procedures which in and of themselves have trade restrictive effects.

NON-MARKET ECONOMY IMPORTS

The Committee has before it proposed revisions to the antidumping law which concern imports from non-market economy (NME) countries. One set of proposals would use the average price at which comparable merchandise is sold in the U.S. by the market economy country with the largest volume of U.S. sales as the surrogate for foreign market value. Both H.R.3, as reported, and S.636 would use the import price from the market economy country with the lowest average import price. While the latter version, supported by the Administration, is preferable because it would penalize an efficient NME producer the least, neither proposal makes economic sense.

Remedies for dumping (and subsidization) are based on the presumption of prices and costs established by market forces. This presumption is invalid in NME's. Any method of comparing NME export prices to an artificial benchmark for foreign market value will of necessity be arbitrary and unpredictable. (The same can be said for attempting to identify "subsidies" in a NME.) These market-based remedies should be abandoned in the case of NME imports in favor of a remedy which focuses only on the effect of those imports on U.S. producers.

Proposed amendments to Section 406 of the Trade Act of 1974, contained in H.R.3, appear to make it a reasonable alternative to both antidumping and countervailing duty procedures involving NME imports, although we do not have sufficient information as yet to evaluate the proposed change in the 406 injury test. What is needed is a level of adverse effect on U.S. producers below that which is required in escape clause investigations, but above that in the present antidumping/countervailing duty laws. Section 406 should become the exclusive remedy for NME imports, and the Department of Commerce could save the time and resources it now expends in attempts to apply a pricing and cost based remedy to a government producer system in which neither prices nor costs have any economic meaning or reliable measurement.

NEGOTIATING AUTHORITY

K mart energetically supports the provisions of the omnibus trade bills which would grant broad statutory authority to the President to negotiate and implement new trade agreements. This authority should include both tariff and non-tariff agreements, as well as "fast-track" procedures under which new agreements would be subject to Congressional approval or disapproval, without amendment. In this regard, the provisions contained in S.636 are preferable to those contained in H.R.3 and S.490.

K mart opposes the restrictive language of provisions tying the renewal of negotiating authority to a showing of "sufficient progress" made in ongoing negotiations, or of the requirement in S.490 that Congress approve trade policy statements as a condition precedent to fast-track procedures. These and similar restrictions would only serve to undermine U.S. leverage in these important trade negotiations.

PRIVATE RIGHT OF ACTION FOR DUMPING

One particularly anticompetitive proposal is the so-called "private right of action" provision contained in Section 166 of H.R. 3, as reported. This provision would amend the Antidumping Act of 1916 to provide a rebuttable presumption of "intent to injure an industry in the United States" if three or more dumping findings had been made against a foreign manufacturer within ten years.

The clear intention of this legislation is to provide antitrust style private relief to companies which believe they have been impacted by imports, without requiring the complaining parties to sustain the burden of proof required by the antitrust laws.

It is incumbent upon the United States as a major beneficiary of the multilateral trading system to tread very lightly when considering measures which are fundamental departures from internationally accepted economic and legal principles. K mart believes that Section 166 of H.R.3 is one such measure. In addition, this provision would violate the international obligations of the United States under the General Agreement on Tariffs and Trade (GATT), have a chilling effect on much international trade, and invite retaliation by our trading partners to the detriment of U.S. economic interests.

A private right of action in which the intent to injure is presumed is fundamentally inconsistent with sound and long-standing economic and legal principles. Price differentiation between different markets is not and has never been considered under U.S. or international law to be a criminal or unlawful practice. Businesses worldwide, including those here in the United States, price in response to the specific, pragmatic conditions in the foreign markets into which they must sell. If they behave in a predatory way and intentionally seek to injure competition or trade, their actions are unlawful, and they are subject to antitrust laws here and abroad with the criminal and civil penalties attendant to conviction or judgment of anticompetitive practice. Antidumping laws, however, are not, nor are they permitted to be under international agreement, punitive in nature. They are remedial, price-adjustment statutes, since international price competition, when not predatory, is considered healthy and desireable.

In addition, it is often difficult or impossible for a foreign manufacturer, exporter, or importer to know before the fact whether importations are at less than "fair value" or not. The calculation of foreign market value and United States price by the Department of Commerce is not an exact science. The existing requirement that home market sales be at prices above fully allocated cost (not marginal cost), and the use of the highly arbitrary constructed value as a substitute for such sales when they are not above fully allocated cost, can create substantial dumping margins even where export businesses are behaving in a fully ethical and economically rational manner. As a result, those who may be liable to private damages would have no way of knowing if they are violating the law before the fact. They also would have no guidance for determining what level of damages might be assessed against them. No business can afford to face such uncertainties.

The provision is flawed from a legal standpoint as well. Administrative determinations by the Department of Commerce and the International Trade Commission (ITC) would be given *prima facie* effect in establishing the elements of sales at less than fair value and injury, despite the fact that procedures before these agencies do not afford parties the full range of rights available in adjudicative proceedings conducted under the Administrative Procedure Act or the Federal Rules of Civil Procedure in courts of law. Discovery and cross-examination are unavailable, as are the affirmative defenses and counterclaims otherwise available in antitrust proceedings in courts of law. By creating a rebuttable presumption of "intent" based on Commerce Department dumping findings simply to ease the burden on plaintiffs filing for damages under the Antidumping Act of 1916, the provision violates fundamental notions of due process.

Responses to dumping are limited by Article VI of the General Agreement on Tariffs and Trade (GATT) itself, and by the Antidumping Code subsequently negotiated under its authority. Both GATT and the Code provide that dumping may be remedied by the assessment of a duty "not greater in amount than the margin of dumping." Section 166 of H.R.3, by subjecting the dumper to additional liability for private damages, would clearly violate these international obligations.

Enactment of a private right of action would surely invite retaliation by our trading partners which, especially if taken in the form of similar legislation, would work to the serious disadvantage of U.S. economic interests. According to data obtained from the USTR, in a recent four year period more antidumping investigations were initiated by the world's importing countries against exports from the United States than from any other single country. In 1985 alone, the United States ranked second, just behind Japan. The Congress must anticipate that our export products will be treated overseas in the same way as imports into the United States are treated. This is a major concern to American producers, who stand to lose when our trading partners follow suit and enact similar private rights of action for dumping.

Finally, the private damage provision is based on a presumption that competition from imports should be treated differently from other competition. The United States, as do other countries, already maintains an array of antitrust laws to protect the domestic marketplace from unfair trade practices including predatory pricing practices from all sources, domestic or foreign. If there is any question as to whether imported products are subject to the U.S. antitrust laws, then Congress could consider appropriate amendments in that field.

For these reasons, K mart respectfully urges this Committee to reject the private right of action proposal contained in Section 166 of H.R.3, as reported by the House Committee on Ways and Means.

ANTIDUMPING AND COUNTERVAILING DUTY LAW

The Senate has before it various proposals to modify the antidumping and countervailing duty provisions of U.S. trade law. Before considering the merits of these new legislative initiatives, the Committee should recall the recent history of trade legislation and determine whether further amendments are actually called for.

The antidumping and countervailing duty laws were extensively modified on three occasions in recent years, in 1974, 1979 and 1984. New, complex, and very expensive procedures have been layered one on top of the other--almost always with the objectives of making it more likely that trade restriction will be granted and providing that administrative discretion which results in practical solutions short of the imposition of trade restriction will be further curtailed.

The number of administrative trade investigations has increased dramatically over the last five years, as has litigation before the Court of International Trade seeking to challenge administrative determinations. The cost of all this increased legal activity, in terms of attorneys fees, government resources, higher prices to consumers and inefficiencies forced on U.S. industries themselves, is beyond calculation. We note that the U.S. International Trade Commission has estimated that the President's so-called Voluntary Export Restraint Program (import quotas) on steel, which is largely based on negotiated settlements of Title VII investigations, resulted in steel prices in the U.S. which were 25 to 56 percent higher than foreign prices in early 1985, and will cost U.S. exporting industries $15.7 billion in lost export sales through 1989 (The Effects of Restraining U.S. Steel Imports on The Exports of Selected Steel-Consuming Industries Report on Inv. No. 332-214, December 1985, U.S. ITC Pub. 1788). The overall cost of import controls in 1984 for seventeen U.S. industries, was a staggering $56 billion, according to the Institute for International Economics, (Trade Protection in The United States: 31 Case Studies, Hufbauer, Berliner & Elliot, I.I.E., March 1986).

One might argue that these costs were acceptable if in fact the procedures, and the trade restrictions they result in, were successfully ridding the marketplace of "unfair traders" as defined by U.S. law, international agreement, or popular supposition -- however, the opposite appears to be the case to date. There has been no discernable effect on the U.S. merchandise trade balance, nor any diminished cry for protection from those domestic industries which have sought and already obtained the greatest amount of artificial market protection. There appears to be absolutely no empirical evidence that U.S. trade laws, after constant "tightening up" over the past dozen years, have had any significant effect on U.S. competitiveness, nor does it appear at all likely that any of the Title VII amendments now under consideration will have any such effect.

ESCAPE CLAUSE RELIEF (SECTION 201)

Section 201 of the Trade Act of 1974, as amended, provides U.S. industries with the ability to obtain temporary import relief from serious injury, or the threat thereof, which is caused by increases in fairly priced imports. This "escape clause" relief is provided upon a finding by the International Trade Commission (ITC) that imports are a substantial cause of serious injury, or threat thereof, and by the President that import relief is not contrary to the national economic interest.

Each of the major trade bills now being considered by the Finance Committee would make fundamental changes in Section 201. Among the more controversial of the proposed amendments are those which would: (1) transfer the decision-making authority from the President to the United States Trade Representative (USTR); (2) *require* the President to implement any import relief recommended by unanimous vote of the ITC; (3) authorize provisional import relief (i.e., suspension of liquidation and retroactive application of any relief ultimately granted) upon a "critical circumstances" determination; (4) shorten from 6 to 4 months the time in which the ITC must make its injury determination; and (5) lengthen the maximum duration of import relief from the present 8 years to 13 years.

H.R.3 would transfer Section 201 decision-making authority from the President to the USTR, while S.490 would make the imposition of import relief *mandatory* on the President when such relief is recommended by unanimous vote of the ITC. K mart opposes these and similar efforts to constrain the President's authority or discretion in the administration of the escape clause mechanism. The President is uniquely situated to determine whether import relief is in the economic interest of the United States. By withdrawing the decision-making authority from the President, or by *requiring* the President to provide import relief in certain situations, these proposed amendments would tend to preclude fair and adequate consideration of the interests of U.S consumers, workers or other industry sectors.

Section 201 cases inevitably require a delicate balancing of widely disparate interests. For example, GATT rules require that the United States compensate (in the form of reduced tariffs) those of our trading partners adversely affected by any import relief. As a result, burdens are often shifted from one industry sector to another. The relief needed to save one industry may often impose tremendous hardships on other industries. The President must also weigh the possibility of retaliation against U.S. exports as a result of import relief. Accordingly, the economic interests of the petitioning industry, other industry sectors, and U.S. consumers and workers, will be best served if authority to weigh the expected benefits of relief against the costs is left with the President.

Both H.R.3 and S.490 would authorize a new form of "provisional import relief," *before* an injury determination has been made by the ITC, for cases found to involve "critical circumstances." Under both bills, critical circumstances would exist if a significant increase in imports (actual or relative to domestic production) over a short period of time had led to "circumstances in which a delay in the imposition of relief would cause damage to the domestic industry that would be difficult to remedy at the time relief could be provided." This proposal is contrary to U.S. obligations under GATT and should therefore be opposed. GATT requires that there be an affirmative determination of "serious injury" caused by increased imports *before* import relief can be granted. Thus, no relief should be provided prior to an ITC investigation and injury determination, or before the President has had an opportunity to weigh the competing interests. In addition, a determination based upon this overly broad definition of critical circumstances, i.e., circumstances in which delay would cause "damage", would fall far short of the required finding of *serious* injury. For these reasons, the critical circumstances provisional relief proposal for Section 201 cases should be rejected.

Finally, K mart opposes the various proposals to either shorten the time in which the ITC must conduct Section 201 investigations or lengthen the maximum duration of import relief from 8 to 13 years. First, shortening the period in which the ITC must make its determination would only increase the likelihood that the ITC will be unable to compile and interpret the data necessary to conduct a thorough investigation and issue a fair finding. As a result, subjective political considerations would play a larger role. Second, Section 201 is designed to provide industries with *temporary* relief to regain their competitiveness. A 13-year period of relief would be excessive. Industries must be willing to make the necessary adjustments to become competitive, but in no case should this require more than the 8 years allowed under current law.

ENFORCEMENT OF U.S. RIGHTS UNDER TRADE AGREEMENTS (SECTION 301)

Section 301 of the Trade Act of 1974, as amended, provides the authority and procedures for the President to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign practices. Under Section 301, the President is authorized to impose import restrictions as retaliatory action, if necessary, to enforce U.S. rights against unjustifiable or unreasonable foreign trade practices which burden, restrict, or discriminate against U.S. commerce. The broad, inclusive nature of Section 301 authority applies to practices and policies of countries whether or not they are covered by, or are members of, GATT or other trade agreements.

Both H.R.3 and S.490 would transfer from the President to the U.S. Trade Representative the authority to make determinations as to whether foreign practices constitute unfair trade practices within the meaning of Section 301. Both proposals would also make retaliation mandatory for cases involving foreign violations of trade agreements or other "unjustifiable" trade practices.

K mart believes these proposals to limit the President's discretion and require retaliation are unwarranted. The President is constitutionally required to direct the foreign policy of the United States and is uniquely positioned and qualified to do so. As in Section 201 cases, the President's authority to weigh conflicting interests and make determinations in the national economic interest should be maintained. Moreover, mandatory retaliation is unlikely to improve U.S. access to foreign markets or conditions for U.S. investment. Requiring retaliation would reduce the President's negotiating leverage and flexibility and, therefore, the effectiveness of his already broad authority to respond to foreign practices.

STATEMENT
OF
FRANK DROZAK, PRESIDENT
MARITIME TRADES DEPARTMENT, AFL-CIO

My name is Frank Drozak, I am President of the Maritime Trades Department (MTD), AFL-CIO, which is comprised of 43 affiliated unions representing over eight and a half million workers. I am also President of the Seafarers International Union of North America (SIU). We wish to thank you for the opportunity to submit a statement regarding trade legislation.

The MTD believes that there is an urgent need for comprehensive trade legislation and my testimony will describe some of the problems facing the U.S.-flag fleet when it is engaged in international commerce. It is necessary that legislation be enacted which will remedy the unfair trade practices faced by the maritime industry. Unfortunately, the MTD does not believe that the trade legislation being considered by the Senate or the bills which were the subject of the hearings of this Committee adequately address the problems that are detailed within this statement.

The MTD believes that the decline in the U.S. merchant fleet is partly caused by the unfair foreign trade practices restricting access to cargo. The decline in the merchant fleet is witnessed by the loss of ships and jobs in the merchant fleet between 1976 and 1986. During this time, the number of tankers fell from 217 to 190 or a decline of 12%, the number of passenger vessels fell from 6 to 2 and the private fleet declined from 521 vessels to 381 vessels or by 27%. The loss in employment has been even more dramatic. In 1976, there were 22,700 jobs in the merchant fleet, in 1986, there were 14,300 jobs, a decline of 37%. My statement will discuss some of the reasons for that decline.

As you are aware, there are a variety of international shipping practices that prevent U.S.-flag vessels from providing efficient and price competitive delivery of cargoes. These practices include licensing regulations, technical restrictions, government control of commercial cargoes, government ownership of vessels, and the use of cheap labor working in unsafe and unacceptable working conditions. My statement will describe some of these restrictive practices and how they operate in a very competitive international shipping market and some of the more well known existing shipping trade barriers.

Fair and equal access to cargoes is the most important factor in world shipping. Without this access, there cannot be a viable U.S. merchant fleet. Unfortunately, several countries either through a formal governmental process or through informal industry cartels control how cargo is shipped and require that it be shipped on national flag vessels or foreign-flag vessels under their financial control. The MTD is keenly aware that government provision of cargo is perhaps the most widely accepted means of developing a fleet for national economic and security purposes. However, we are increasingly concerned with the informal cartel arrangements where national companies or cartels of companies favor national shipping lines. These informal arrangements are difficult to treat under America's trade laws and in many cases are only discernible because of the consistent denial of cargo to U.S.-flag carriers.

Licensing and regulatory restrictions by foreign governments often make it impossible for U.S.-flag carriers to enter into a market or operate profitably, although they are not obviously designed to prevent American vessels from participating in the carriage of cargo. America's system of government allows parties, both foreign and American, to comment on proposed legislation or regulatory changes which would affect them. Conversely, many foreign governments permit comments only from national interests during their drafting of laws or regulations, and routinely develop policies favoring national companies.

Restrictions in foreign countries on the use of equipment developed for modern vessel operations have also hampered the efficiency of U.S.-flag carriers. U.S.-flag carriers have often developed technology or operating systems which greatly increase service and efficiency, including the introduction of containerized cargo, LASH vessels, double stack trains and other intermodal advances. The competitive advantages resulting from advanced technology or systems is often nullified by foreign governments which often delay the use by U.S.-flag carriers of new equipment or systems. These delays allow their own national-flag carriers the opportunity to adopt the new technology before the American-flag carrier expands its market share. In other cases, the national flag line does not adopt the technology and the country refuses to accept the use of this advanced technology or service. The result is that U.S.-flag competitive advantages are eliminated and the company's operations are disrupted.

State-owned fleets have also changed the established international shipping structure. Presently, most maritime analysts believe that there is a surplus of shipping capacity in the international trades. Despite this surplus, many nations that operate their own fleets continue to expand their tonnage. This is particularly damaging to U.S. carriers that depend on a fair market to allow them to operate profitably. State-owned fleets are not established to make a profit or fill a demand as are privately operated vessels. As a result, these fleets do not have to earn profits to continue to operate.

State owned fleets operating on a particular trade route often contribute to overtonnaging on that route, which may reduce the available charter or freight rates for competing private commercial vessels. As a result, private vessels that operate on the route may have difficulty operating profitably. Additionally, the presence of a state-owned or operated fleets often results in the government directing commercial cargo to their vessels.

The expansion of state owned or operated fleets is witnessed by the particularly rapid expansion of government owned tankers. Since 1979, state run tanker fleets have expanded by over 25%. Between 1979 and 1984, Kuwait increased its fleet by 42%, Iran by 66%, Venezuela by 42%, and Indonesia by 120%. These rapid expansions occurred despite there being a particularly severe depression in the tanker industry. The MTD believes that the addition of these vessels is contributing to the length and severity of that depression.

A glaring example of the operation of these fleets is the control of the transportation of oil and refined products. Oil producing and exporting countries have increased their refinery capacity, at the same time that they were building tanker fleets to transport refined products. The result has been that these countries now carry the oil products which were once carried by American-flag vessels. This policy has cost jobs in both the maritime and refining industries.

I would now like to discuss some of those countries with significant barriers that restrict the ability of U.S.-flag carriers to operate profitably. In discussing these countries, I hope to illustrate the breadth of the problem as well as the variety of actual trade restrictions.

Japan's restrictions on trade have been subject to continuous scrutiny by the Congress. One of the more egregious examples of unfair trade is the failure of Japanese automobile companies to transport automobiles on U.S.-flag vessels. Besides Japan, the other nine countries producing automobiles for export to the United States utilize their national-flag vessels to transport them. The House Merchant Marine and Fisheries Committee, after hearing testimony on this subject last year, concluded that United States operators are being systematically excluded from the trade and that legislation requiring the Japanese to discontinue the practice of reserving this cargo for Japanese-flag vessels was necessary. They stated that without such legislation the practice would continue.

The restrictions on high-cube or oversized shipping containers on Japanese roads are of particular concern to the MTD. Since the early 1970's, American-flag carriers have attempted to utilize these containers in the carriage of cargo to and from Japan. However, restrictions on the use of these containers have prevented their widespread use in Japan.

Taiwan and Korea, significant and growing trade partners on the Pacific Rim, have significantly reduced the opportunities for U.S.-flag vessel operators who attempt to service markets through intermodal connections. A recent development in international shipping is a U.S. liner vessel delivering cargo with door-to-door service. This requires the carrier to arrange and coordinate for water, railroad and truck movements, as well as handle freight forwarder services.

Taiwan and Korea have prevented U.S.-flag carriers from providing this type of service in their markets. Their carriers provide this type of service in the United States, because the United States does not have restrictions on who can deliver intermodal services. Taiwan laws prohibit foreign nationals from acquiring a license to operate trucking services in Taiwan. Korean law prohibits ownership of trucks. These restrictions place U.S.-flag carriers at a significant operational disadvantage, since Taiwan-flag or Korean-flag carriers freely provide container related and trucking services either directly or through their own integrated subsidiaries in their home markets.

Additionally, the Taiwanese Shipping Enterprise Act and related regulations prohibit a branch of a U.S.-flag carrier operating in Taiwan from engaging in intermodal activities, including acting as a shipping agent, container terminal operator or sea cargo forwarder. At two of the three major port facilities in Taiwan, China Container Terminal Corporation (CCTC), a partly government owned company holds a monopoly on port services. Such services include shipside container operations, stuffing, and operating the freight station and related equipment. These services are provided at a higher cost and are less efficient than could be provided by an integrated company's operations, and are a burden on otherwise efficient U.S.-flag carriers.

The People's Republic of China presents several barriers to firms attempting to enter its markets because of its closed trading system. China's trading system suffers from a serious lack of transparency. This confused system makes it difficult to discover which officials and organizations within China's trading system have the authority to make decisions or to spend foreign exchange. Any U.S.-flag carrier attempting to operate in China must incur enormous expenditures of time and money; often these attempts do not yield business and are a waste of money.

Mexico, through administrative actions, has erected several provisions that significantly benefit Mexican-flag vessels. These actions include the approval of applications for import licenses, with the provision that the goods covered by the application be imported in Mexican-flag vessels. Mexico allows import quotas on various commodities to be expanded, but only if the imports are carried on Mexican-flag vessels. Mexico also imposes different taxes on cargo depending on whether a Mexican-flag vessel is used. These regulations effectively deny access of foreign-flag vessels to Mexican cargo.

Venezuela has erected several measures to favor the national shipping line. First, shippers must obtain insurance for freight with a Venezuelan insurance carrier. Second, Venezuelan-flag carriers receive rebates on wharfage fees and pilot fees, thereby giving them a cost advantage over third-flag vessels.

The issue of unfair labor practices in international shipping should also be considered by this committee. Present conditions on some flag-of-convenience and state controlled vessels are often abominable. The pay is substandard and the conditions under which the seamen must work are unacceptable, unlicensed Chinese seamen recieve $25/month, whereas the minimum pay rate sanctioned by the International Labor Organization (ILO) is $205.45/month.

These poor conditions and low wages often contribute significantly to low operating costs. American-flag operators have demonstrated that through improved technology, more efficient management systems, and the use of well trained crews that they can provide reasonably priced service. However, the presence of underpaid labor artificially suppresses freight rates and can make a competitive vessel unprofitable. The MTD believes that this Committee should scrutinize the issue of unfair labor practices in waterborne commerce and fashion a trade remedy for those conditions.

I have discussed the maritime industry's international trade problems in my testimony as if the maritime industry was an industry like any other in this country. Unfortunately, its decline does not only mean that jobs will be lost or industries bankrupted. You know, as well as I, that this nation's economic prosperity and national security depend on a strong merchant fleet. The United States must, to survive, project its military forces and economy into every region of the world. Other countries that depend on this global presence depend on a merchant fleet, and have ensured that their fleets expand.

The decline of the U.S.-flag fleet has now come to the attention of the President. In recognizing that the execution of U.S. strategy depends on the ability to reinforce and resupply forward deployed forces, the Administration acknowledged that sealift will be responsible for carrying out this goal. However in assessing America's ability, the Administration stated:

> . . . the continuing decline of the U.S. merchant marine and U.S.-flag commercial shipping assets is a matter of concern This problem is compounded by the decline of the U.S.-flag fleet which results in a reduction of the seagoing workforce to man all our U.S.-flag vessels-as well as ships of the Ready Reserve Force, the National Defense Reserve Fleet and any effective U.S. controlled ships which might need recrewing. The lack of merchant mariners in the near term could impede our ability adequately to project and sustain forces by strategic sealift.

These are the words of the President, however it is left to the Committee to achieve the results necessary to assure that America does have a strong merchant fleet.

In conclusion, the Maritime Trades Department respectfully requests that the Committee act quickly to solve the problems facing U.S.-flag carriers. America's share in the transportation of America's waterborne commerce continues to decline and major U.S.-flag international shipping companies are in bankruptcy. The Maritime Trades Department fears that without remedial legislation, the U.S.-flag fleet will not be operating in international commerce in the future.

Statement on BEHALF OF
CONSEJO EMPRESARIAL MEXICANO
PARA ASUNTOS INTERNACIONALES, A.C.
(MEXICAN BUSINESS COUNCIL FOR INTERNATIONAL AFFAIRS)

Regarding H.R. 3, S. 490, and
Title II of S. 636

CEMAI is an independent civil association supported by voluntary contributions from its members, which are 260 Mexican private companies. CEMAI's purpose is to promote the international economic relations of Mexican business.

I would like to take this opportunity to bring to the Committee's attention the current status of U.S.-Mexico trade and investment relations, discuss where those relations might be headed, and touch on the dangers to healthy U.S.-Mexican economic relations posed by some of the provisions embodied in S. 490 and H.R. 3 as reported by the House Ways and Means Committee.

Mexico is the United States' third largest export market. Thirty billion dollars worth of goods were traded between the two trading partners in 1986. Mexico's small trade surplus with the United States -- $1.9 billion in nonpetroleum trade in 1986 -- is used to help repay the $100 billion debt Mexico currently owes to this and other nations.

Over the past several years there has been a growing realization in Mexico of the benefits to be gained from adhering to internationally agreed upon trade standards. Such a consensus has formed despite the fact that meeting global rules would require overturning long and deeply held domestic practices.

On August 14, 1986, Mexico agreed to join the GATT. Next month, it will formally sign the GATT Standards, Subsidies, Customs Valuation, Anti-Dumping, and Import Licensing Codes. Mexico has slashed its import licensing program, and tariffs have been reduced on numerous items. By October 1987 no tariff will be greater than 30%. Just one year ago, the top rate was 100%.

August 1986 was a busy month in terms of changing Mexico's international trade posture. In addition to Mexican accession to GATT, Presidents Reagan and de la Madrid agreed to negotiate a bilateral framework to govern U.S.-Mexican trade and investment relations. Negotiations to fulfill that pledge are now ongoing.

Mexico's actions cited above are only one part of a much broader economic liberalization process. The Mexican government is selling certain state-owned enterprises in an attempt to make the Mexican economy more responsive to private market forces. It has also started to ease restrictions on foreign investment. While Mexico generally follows the 49% foreign ownership concept as provided in its 1973 investment law, Hewlett-Packard and IBM have opened Mexican subsidiaries with 100 percent U.S. ownership. General Motors has just announced plans to produce a line of mid-sized cars in Mexico. Understanding the role that constructive foreign investment can play in the health of a nation's economy, Mexico has embarked on a course of pragmatic flexibility.

I take the time to recite the recent actions that Mexico has taken to underscore the point that Mexico has followed a consistent pattern of activity designed to open itself to the world economy. With these actions, Mexico has established that it desires to play a constructive role in the international trading system.

Many of these achievements came about with the support and encouragement of the United States. In fact, these trade liberalizing moves can only benefit the U.S.-Mexico trade relationship. Mexico purchases an average of 60 percent of its exports from the United States and depends heavily on its ability to export to the United States. Mexico's long-term ability to meet its external obligations and restore growth depends on its access to U.S. markets for goods. It is critical to keep U.S. markets open to Mexican exports if Mexico is to have any opportunity to repay its debts.

It is in this context that I would identify a number of provisions in S. 490 and H.R. 3 which threaten harm to this U.S.-Mexican economic partnership that I have described above. For the Committee's information, I have attached a list of provisions that would have the greatest effect on U.S.-Mexico economic relations.

In particular, the changes to the test for domestic subsidies contained in H.R. 3 pose serious dilemmas for Mexico. For instance, it appears that the proposal would treat as a countervailable subsidy the provision of natural gas or fuel oil by PEMEX, Mexico's state-owned oil company, to domestic industries at prices below the world market price or the U.S. price. Of late, Mexican natural gas prices have been slightly higher than the spot market price in the United States. However, fuel oil in Mexico is priced substantially below the U.S. price. PEMEX sells 60 percent of its fuel oil to the public electric utility. Fuel oil accounts for over one-half of the electric power generated in Mexico. Therefore, fuel oil prices and electric rates are closely linked in Mexico.

The prices for both fuel oil and electricity are being raised consistent with the economic and political circumstances of Mexico. If PEMEX is required to sell fuel oil to the public utility at the U.S. price, the utility would likely be required to precipitously raise the price it charges for electricity. A drastic increase in the electric rate could lead to economic or political disruption in Mexico. The proposal in H.R. 3 raises the specter that all companies in Mexico that rely on petroleum products as an input product that are priced below the world market or U.S. price could be subject to countervailing duties.

Such protectionist legislation is not in the interest of either the United States or Mexico. The flow of goods and services between Mexico and the United States would shrink. Further disruptions could occur should Mexico, or any other nation, enact retaliatory legislation. U.S. credibility and commitment with respect to the new and evolving U.S.-Mexico economic relationship would be suspect. Finally, U.S. leadership at the arduous and time-consuming multilateral negotiations of the Uruguay Round would be called into question if the U.S. takes unilateral action that breaches current GATT standards.

During a recent debate in the Senate regarding another issue in U.S.-Mexican relations, I was impressed by the fact that many Senators were reluctant to adopt unilateral and confrontational approaches to solve U.S.-Mexico problems. One Senator seemed to summarize the sentiments of many Senators by saying:

> Approaching common problems in a unilateral and confrontational manner will not bring the desired results . . . . Both the United States and Mexico need to build a stronger partnership for growth and stability. Responsible leaders in both countries recognize this fact and are beginning to act upon it.

Although not spoken in connection with trade matters, these words have great applicability and meaning in terms of U.S.-Mexico economic relations.

On behalf of CEMAI, I thank the Committee for its interest.

SUBMISSION ON BEHALF OF
NEW ZEALAND MILK PRODUCTS, INC.
SENATE FINANCE COMMITTEE
April 21, 1987

This submission is made on behalf of New Zealand Milk Products, Inc., Petaluma, California (NZMP) in response to your notice of March 20, 1987, requesting comments comparing various pieces of trade legislation. During the consideration of trade legislation in the House, a number of proposals were made which could affect casein and other milk protein imports - notably bills which would variously impose import quotas, change tariff classifications, or link casein imports with the calculation of estimated levels of milk purchases by the CCC. NZMP opposes each of these provisions. It opposes the linkage provision because it establishes a theoretical relationship where no real one exists. It opposes the quota and classification proposals for two principal reasons. First, they would impose restraints on a product which is not produced in the U.S. and are thus totally unjustified in economic terms; and second, such an imposition would be a clear violation of the United States' obligations under the GATT where a zero rate of duty was bound in bilateral negotiations with New Zealand, and the criteria of Section 22 must be met.

New Zealand Milk Products is a U.S. corporation, wholly owned by the New Zealand Dairy Board, which was founded some seventeen years ago to market in the U.S. the whole range of dairy products manufactured in New Zealand, which are allowed access to this market. The New Zealand Dairy Board is a producer's cooperative organization representing the dairy farmers of New Zealand. While the Board has responsibilities in the administration of the dairy manufacturing industry, its principal function is the export of dairy products to world markets.

As the Committee is probably aware, dairy farming is one of the basic sectors of the New Zealand economy - an economy which depends heavily on the export of livestock products. The manufacture of dairy products in New Zealand absorbs around 90% of total milk production, and about 80% of the manufactured output is exported each season. The New Zealand Dairy Board is the world's major commercial exporter of dairy products and New Zealand is dependant on dairy exports to a greater degree than any other country. As the central marketing organization, the New Zealand Dairy Board last year exported more than a billion dollars worth of manufactured dairy products to world markets. Because of these considerations the Board, and indeed all of New Zealand, are greatly impacted by the agricutural protectionism of the countries to which she exports. It is this concern that leads to this submission.

With respect to casein, imports have been the subject of four major (and numerous lesser) studies in the last six years - all of which have found that the impact of imports is negligible. Most recently, the USDA in its study of April 1986, found that "the volume of casein imports is not statistically related to CCC purchases of cheese or NFDM, nor to any measure of domestic price support program costs. There is no logical basis to hypothesize such a relationship...". Previously, in June of 1982, the ITC found under Section 22 of the Agricultural Adjustment Act that casein was not being imported "under such conditions or in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program for milk..." Nothing has changed.

There is still no commercially viable domestic production of casein which is not a substitute for domestically produced dairy products. Its production in the United States was made uneconomic over 30 years ago by the adoption of the dairy price support program itself. Because of the open-ended offer of the U.S. Government to buy nonfat dry milk (NFDM) at artifically high prices no U.S. dairy processor would even consider producing casein for a comeptitive market while NFDM remains at present prices. A casein industry, based on a product price that is equivalent to the United States support price for NFDM would not be viable because at such a price demand would virtually disappear.

In addition, as the USDA noted, there is no statistical correlation between purchases of nonfat-dried milk under the United States milk price support program and the level of casein imports. Surpluses accumulated under the price support program are the result of the operation of the program itself and are unrelated to the volume of casein imports. Having thus failed to demonstrate to any objective agency of the United States Government any need for such a quota, the domestic industry continues to seek legislated quotas.

As these various studies have noted, New Zealand is by far the largest supplier of casein to the U.S. market. Casein is produced on a regular and continuing year-round basis in New Zealand in plants dedicated to its production and representing substantial capital investment. It is not produced as a surplus product, but is part of the normal mix of dairy products produced in New Zealand to assure the maximum return possible to the New Zealand dairy farmer. It is priced accordingly. That is, the price of casein is established at a level that will assure that the net back return to New Zealand will equal that for nonfat dry milk or any other skim milk product. As it is economically impossible for any country to subsidize a major branch of its economy, so it is impossible for New Zealand to subsidize its dairy industry, and it does not - New Zealand's ability to compete worldwide is founded in the lower cost basis provided by her favorable climate and efficiency.

The volume of New Zealand's casein output is also relatively stable, first because total milk production is established by the ability to market the products produced from the fat portion of the milk, and second, because the dairy industry must spread the risk inherent in international dairy trade in order to achieve the highest practicable prices for its producers whose livelihood directly depends upon export realizations. New Zealand is committed not to volume growth so much as to careful and sustained technological advance in casein production for export. This has required a continuing heavy investment, both in manufacturing plants and in the development of technological know-how -- imported casein is now available from New Zealand in over 40 major specifications, many of which are divided into subgroups to meet particular customer requirements. This technically advanced and highly diversified group of products is the result of years of research into the application of casein.

Any notion that casein is simply a substitute for nonfat dry milk in its food and feed applications has been completely dispelled by the ITC and USDA in their reports. They describe both the functional and nutritional characteristics of casein which are not shared by nonfat dry milk and the uses in which nonfat dry milk could not be a substitute. In brief, these functional characteristics include the ability of casein to aid in gel formation, stabilize a foam or whip, increase viscosity, or hold fat in a stable emulsion without phase separation. According to the ITC, these properties allow for the use of casein in such food products as coffee whiteners, frozen desserts and whipped toppings. Nutritionally, the ITC reports that it is virtually uncontested that milk products, including nonfat dry milk, could not replace casein in a number of nutritional formulas, particularly those for persons intolerant to lactose or intact proteins.

The ITC also recognized the substantial factor of consumer preference in the choice of many casein containing products, disabusing any notion that price is the only criteria in the use of casein in manufactured food products. Casein is a product which allows the consumer this freedom of choice, it is a product which contributes to the economic well being of the processed food industry, but it is not a product which displaces nonfat dry milk.

Likewise, other milk protein product imports, such as whey protein concentrates and lactalbumins, are designed as functional food proteins. Whey protein concentrates are used in special dietary preparations and nutritional supplements. They are ideal proteins for the preparation of infant formulae which simulate the specific characteristics of mother's milk. Lactalbumins are used for fortification of a wide variety of cereal goods which generally contain lower quality proteins, such as breakfast cereals, pasta, cookies and pizza crust.

U.S. produced whey protein concentrates normally have a protein concentration of 34-35% and are used primarily as milk replacers and fillers. These lower protein products are not incorporated in foods to utilize the functional characteristics of the protein that they contain, whereas the New Zealand produced 55% or higher protein products have a much wider and nutritionally more flexible utilization.

Finally, the United States' international obligations under GATT prohibit the restriction of trade in products unless certain agreed upon conditions are met. In the case of dairy products the U.S. was granted a waiver by the GATT for Section 22 of the Agricultural Adjustment Act of 1933. In seeking that waiver the U.S. made a statement which set forth the conditions under which restrictions could be imposed. In particular, paragraph (c) of that statement reads as follows:

> "that import restrictions can be imposed under Section 22 only when the President finds that imports are having or are practically certain to have the effects for which Section 22 action is required, and then, except as provided by law in emergency situations, only after investigation by the U.S. Tariff Commission (now the U.S. International Trade Commission), after due notice and opportunity have been given to interested parties;" GATT, 3rd Supp. BISD 32 (1955).

Thus, for restrictions to be imposed, either directly or indirectly, a Presidential determination must be made, a condition clearly not met by the tariff and quota proposals considered in the House. To couch such legislation in Section 22 language does nothing to meet the U.S.'s obligations under the waiver. Further, the zero duty on casein was bound in GATT negotiations with New Zealand. As such, the abrogation of that binding which would result from the enactment of tariff or quota legislation would not only violate the United States' obligations under GATT, but would entitle New Zealand to compensation.

The New Zealand dairy industry has committed, over many years, a considerable technical and commercial investment in the development of a major part of the United States market for casein and other milk protein products, and would be seriously damaged if there were any restrictions imposed on this trade. It is becoming increasingly obvious that any country's health is determined to a great extent by the health of its trading partners. The casein/milk protein trade is a perfect example. These products are the only New Zealand dairy exports to the United States not currently subject to protectionist quotas. Restriction of this legitimate business would reflect adversely on the United States' international trade posture, especially as no other industrialized country has seen the need to impose quantitative import restrictions on these products. It would also deprive United States end users and consumers of valuable products which serve them well economically and nutritionally - and so deprive them without any benefit accruing to a domestic industry.

Respectfully submitted,

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JASON S. BERMAN

PRESIDENT

RECORDING INDUSTRY ASSOCIATION OF AMERICA

This statement is submitted by the Recording Industry Association of America (RIAA), a trade association whose member companies create and market approximately 90 percent of the prerecorded discs and tapes that are sold in the United States. We appreciate the opportunity to present our views on the trade legislation which is before the Senate Finance Committee.

International trade in American-originated copyrighted products and services, including sound recordings, is assuming ever-increasing significance to the U.S. economy. Meanwhile, piracy has reached epidemic proportions worldwide because copyrighted products, while difficult and expensive to create and market, are easy and inexpensive to copy. The future viability of our industry's ability to produce a favorable balance of trade depends on adequate and effective copyright protection worldwide.

Only since the Trade and Tariff Act of 1984, have intellectual property concerns been properly recognized as an important component of the U.S. trade policy agenda. We have had significant successes in the last few years as a result of tools provided by those laws -- and for that we are grateful both to Congress and the Administration. Nevertheless, massive piracy continues to displace the sale of our products throughout the world. We therefore are strongly in favor of the proposals to improve intellectual property protection that have been introduced in the Senate and are before this Committee. The House Ways and Means Subcommittee on Trade and the full Ways and Means Committee have spent numerous hours refining those proposals and have favorably reported a bill to the House, that contains provisions that satisfy the needs of the American intellectual property community. We therefore urge this Committee to adopt the House Ways and Means proposals on intellectual property protection.

I. THE TRADE PROBLEMS FACING THE COPYRIGHT INDUSTRIES

U.S. trade in copyrighted works is, to an ever increasing extent, critical to maintaining the strength and competitiveness of the United States within the world economy. The copyright and information-related industries contribute over $150 billion to the U.S. economy and employ more than two percent of the U.S. civilian labor force.

While the potential for export growth in goods and services produced by the copyright industries is likely the highest of any sector in the U.S. economy, realization of this potential is critically dependent on eliminating its principal nontariff trade barrier -- the worldwide piracy of U.S. copyrighted works on a mammoth scale. The policies and practices of foreign governments with respect to intellectual property protection significantly affect the interests of these industries in their production and distribution activities worldwide.

A. The Nature of Piracy

Copyrighted products are difficult and expensive to produce. The same technological advances that have contributed to the increased accessibility of these products to the public, such as improvements in audio cassettes and duplicating equipment, however, have also made them easy and inexpensive to pirate.

"Piracy" is the theft of intellectual property by the unauthorized duplication and sale of another's creative work -- such as a book or musical recording. Pirates undersell legitimate competitors, because they bear no creative costs and pay no royalties to the artists, publishers and manufacturers who created the materials they exploit. Pirates simply appropriate for themselves the proceeds that rightfully belong to the products' creators.

Pirates also sometimes "counterfeit" products by duplicating the trademark, labels, graphics, and overall "trade dress" of a product in order to deceive consumers into believing they are buying the genuine article. The pirate in this case, takes not only the valuable intellectual property embodied in the product but also the goodwill and reputation for quality cultivated by the manufacturer of the product. The pirate often diminishes that goodwill by passing off a shoddy imitation as an authentic product.

Some piracy exists, and will continue to exist, in all countries. Rampant piracy, however, can only take root and flourish when countries do not have or do not enforce adequate and effective copyright laws.

Some countries, such as those in the Persian Gulf, remain completely outside the international copyright community, and offer virtually no copyright protection. The result is an international bazaar of stolen copyrighted properties. Other countries provide adequate and effective copyright protection for their own citizens, but do not accept the principle of "national treatment" -- i.e., that foreign works should receive treatment no less favorable than that accorded domestic works. For example, in 1985 the Japanese adopted legislation to give copyright owners the right to control the commercial rental of records, but extended protection only to Japanese recordings. Also, many nations condition copyright protection on compliance with restrictive eligibility requirements. Others impose burdensome or discriminatory formalities.

Many developing nations, and some industrialized ones, find it beneficial to their own interests to adopt laws providing less than adequate copyright protection. This permits them immediate access to foreign intellectual property at little or no cost. Others, such as Indonesia, are reluctant to enter into multilateral copyright relations because they have a large, very profitable group of indigenous pirate entrepreneurs who provide substantial domestic and export revenues. Yet others adequately protect copyright in theory, but fail to enforce their laws effectively in practice.

B. The Extent of the Piracy

In whatever form it takes, piracy has reached crisis proportions. The problem is not only vast, but also growing.

The U.S. record industry suffers the loss of massive revenues each year from pirated and counterfeit records and tapes manufactured and sold in foreign markets. It is estimated that pirates sell almost a billion dollars worth of stolen music worldwide. The Pacific Basin alone now accounts for about 140 million pirated units each year. On a unit basis, pirates sell five or six sound recordings for every ten records or tapes sold legitimately in world markets. A vast majority of those recordings are the work of American performers and composers.

Piracy also hurts book publishers, motion picture producers, computer software companies and the other copyright industries. We are not alone in the recording industry in complaining about this problem.

Indonesia is a prime example of the problems we face. Indonesia is a major source of pirate products, and provides absolutely no copyright protection for foreign nationals. The U.S. Trade Representative estimated the loss to U.S. copyright owners in 1985 at $106 million from domestic piracy in Indonesia and $100 million from pirated goods exported from Indonesia. Total Indonesian exports of records and tapes are estimated to be between 30 and 60 million units annually. Indonesia may have replaced Singapore as the world's largest source of pirate tapes.

Last May, a principal of an Indonesian company was convicted in New York of six felony counts of copyright infringement and violation of U.S. customs laws, for importing pirate tape recordings. The defendant indicated that his Indonesian company had the capacity to produce over two million infringing tapes per month. Shocking is the fact that testimony and audio tapes introduced at the trial showed that an Indonesian diplomat stationed in New York -- an unindicted co-conspirator -- played a central role in the illegal activity, and that diplomatic privileges were abused.

C. The Harmful Effects of Piracy on Countries Where It Exists

Countries tolerate piracy -- and by their legal regimes even encourage it -- primarily because pirates provide low-cost and sometimes otherwise unavailable products to their citizens. Piracy also provides jobs and may help reduce revenue outflow from a country's treasury. In addition, the ideology of many countries does not support respect for intellectual property rights.

These views are shortsighted, for the country that harbors pirates is itself a victim of piracy. Consumers in that country are led to purchase inferior, counterfeit goods. Indigenous creative authors and industries cannot develop because they face unfair competition from pirated foreign works. Those fledgling indigenous industries that do develop find that their products are pirated as swiftly as they are produced. The existence of piracy in a country also discourages foreign companies from engaging in production or distribution -- thus denying the country opportunities for legitimate economic growth. Finally, by allowing pirates to operate, a country demonstrates its lack of regard for fair trade practices, thereby deterring trade partnerships and bringing that country into disrepute in the eyes of the world.

II. CURRENT TRADE LAW

We have only recently begun to understand fully the serious trade implications of rampant disregard of copyrights. U.S. Government policy with regard to improvements in copyright protection has been the subject of Congressional and Administration consideration in the last several years.

The broad outlines of that policy were embodied in three separate laws passed in the 98th Congress. These laws -- the Generalized System of Preferences ("GSP") Renewal Act of 1984, the International Trade and Investment Act and the Caribbean Basin Economic Recovery Act -- contain provisions which condition trade benefits provided by the United States to other countries on

> the extent to which such country provides adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property including patent, trademark and copyright rights.

By emphasizing the right "to secure, to exercise and to enforce" such rights, these trade laws look to the practical, rather than theoretical, protection which a nation affords to the copyright rights of foreign nationals. This applies not only to nations where lack of protection is presently a problem, but to all nations in order to ensure a universal climate conducive to copyright protection.

The prominence of intellectual property as a trade issue in the 1984 legislation is having the desired effect. RIAA, individually and as a member of the International Intellectual Property Alliance, has used the legislation to effect change around the world. Many developing countries have at long last become attentive and responsive to America's concerns about intellectual property protection. Korea, Malaysia and Singapore, three of the countries identified in the 1985 Alliance report, Piracy of U.S. Copyrighted Works in Ten Selected Countries, have made substantial progress toward providing adequate and effective copyright protection.

A Section 301 case on Korea's intellectual property rights practices, which was initiated by USTR in October 1985, was finally resolved in July 1986 through Korean agreement to enact a comprehensive copyright bill by July 1987, adhere to international conventions and take other actions. Malaysia enacted a new copyright law following pressure from the U. S. in bilateral negotiations and as a result of the Generalized System of Preferences ("GSP") general review. Singapore also enacted a copyright law in January of this year. We are continuing to monitor these countries and others to ensure that steps that have been taken lead to adequate and effective protection.

RIAA continues to work at the forefront of the movement to achieve greater intellectual property protection, using the tools provided under existing laws. Along with other members of the International Intellectual Property Alliance, we have actively participated in the GSP process and have consulted with

USTR staff concerning intellectual property discussions with foreign countries.

Last June, we filed a petition with USTR requesting de-designation of the Republic of Indonesia as an eligible beneficiary developing country under the GSP program. We understand that Indonesia has finally agreed to address its copyright problems and is in the process of preparing new copyright legislation. Last week the Administration postponed a decision on our petition for six months, but we certainly expect that it will withdraw GSP benefits from Indonesia unless Indonesia has provided adequate and effective intellectual property protection by October.

Indonesia's failure to take definite steps toward much needed protection, in the face of existing U.S. legislation, underscores the need for additional legislation. Indonesia is not alone. Piracy continues to run rampant in Thailand, Brazil, India, Liberia, middle eastern countries like Saudi Arabia, and around the world.

Unfortunately, the negotiating process takes time, as we have seen with Korea, Singapore, Malaysia and now Indonesia. Every delay leads to further hemorrhaging in our industry as more and more pirate recordings are produced and sold. Strong legislation is called for quickly. It is important to remember that commercial record piracy, like the record business itself, is a "hits" business. Whatever is popular currently will be pirated currently.

III. PROPOSED LEGISLATION

It is imperative that trade legislation reported by this Committee and enacted by the Congress contain a strong intellectual property component. Such legislation will send an important signal to all countries of the world that adequate and effective intellectual property protection is treated as a critical trade issue in the United States. Such legislation is apparently necessary to grab the attention of countries that have not already taken steps to improve intellectual property protection.

Legislation is also necessary to provide industry with the tools to protect itself, to provide the Administration tools to encourage foreign governments to take action, and to encourage the Administration to utilize the tools already at its disposal.

The intellectual property proposals introduced earlier this year by Senators Wilson, Cranston, Heinz, Lautenberg, Mitchell and Wallop -- embodied in S. 335 -- have now been refined by the House Ways and Means Committee. Those proposals are a logical extension of existing trade law, and should be supported by this Committee.

Specifically, the Ways and Means Committee bill would:

First, create a mechanism to improve international intellectual property rights protection through identification by the U.S. Trade Representative of priority foreign countries that deny adequate and effective intellectual property rights within 30 days after issuing the annual Foreign Trade Barriers report required by Section 181 of the Tariff Act, 19 U.S.C. § 2241. USTR would be required to promptly self-initiate Section 301 investigations on each priority country, unless he determines that initiation would be detrimental to the U.S. national economic interest and so informs Congress. USTR's recommendation to the President for retaliatory action would be required within six months of initiation, with a possible six-month extension in certain circumstances.

Second, the bill would improve the effectiveness of intellectual property protection under section 337 of the Tariff Act of 1930, which prohibits importation of pirated products into the United States, by,

1. eliminating the injury requirement in intellectual property cases,
2. shortening the time period for issuance of temporary exclusion orders to 90 days, and
3. increasing penalties and making other more minor procedural improvements.

Third, the Ways and Means bill would make intellectual property protection a principal trade negotiating objective of the United States. Principal bilateral and multilateral negotiating objectives are set forth in the bill:

1. to seek enactment and effective enforcement by foreign countries of laws which recognize and adequately protect intellectual property, including copyrights; and
2. to develop and strengthen international rules, dispute settlement provisions, and enforcement procedures against trade distorting practices arising from inadequate national protection and ineffective enforcement of intellectual property rights, including

(i) incorporation in the GATT of adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights as the basis for the dispute settlement provisions and enforcement procedures, which norms and standards are complementary to those of existing international intellectual property conventions; and

(ii) the supplementing and strengthening of standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

We also support the provisions in S. 490 for monitoring foreign intellectual property systems (Sec. 413), foreign assistance for development of programs to protect intellectual property rights (Sec. 414) and establishment of the U.S. Intellectual Property Training Institute (Sec. 415). These provisions would increase resources at the local embassy level to monitor progress and compliance, provide periodic reports, and ensure effective liaison with the private sector. They would also increase resources for education and training to improve developing country intellectual property.

TESTIMONY OF EUGENE L. STEWART
BEFORE THE SENATE FINANCE COMMITTEE
CONCERNING PENDING TRADE LEGISLATION
APRIL 8, 1987

Mr. Chairman and Members of the Committee:

A. Introduction

I wish to thank you for allowing me to appear before you today for the purpose of commenting on three of the trade bills currently being considered by this Committee. I appear today on behalf of the Trade Relations Council of the United States, an organization of corporations and associations concerned with trade law and policy; Roses Inc.; the national association of rose growers; Smith Corona Corp.; The Timken Company; and Bethlehem Steel Corp. Several of these and other companies have asked me to address specific matters, and I will so note at the appropriate time.

I have practiced trade law for some 30 years, representing domestic industries exclusively. My experience has impressed upon me one basic fact. The state of this nation's trade laws have a direct and decisive effect upon the ability of American companies to compete, both within the United States and in the world market. As they presently stand, the trade laws do not provide adequate protection for American industries against unfair foreign competition. Trade concessions have been made without regard for their effect on industry, and the escape clause has proven incapable of providing meaningful relief from import competition. Beyond this, we hamper our exports by overly restrictive export controls. Finally, the burgeoning budget deficit, and the unavailability of funds for research, development, and modernization, have severely restricted the ability of American business to invest for future growth.

B. Unfair Trade Practices

American industries are confronted with a number of unfair trade practices on the part of their foreign competitors. The most common of these are dumping and subsidization. Increasingly common as well are so-called "gray imports," and unfair competitive practices, such as patent and copyright infringement.

1. Changes to the Countervailing Duty Law

This Committee has stated that dumping and subsidization "are two of the most pernicious practices which distort international trade to the disadvantage of United States commerce." S. Rep. No. 249, 96th Cong., 1st Sess. 37 (1979). It is only sensible that our antidumping and countervailing duty laws should be effectively administered. S.490, S.636, and H.R.3 all contain provisions that would strengthen these laws significantly. Cabot Corp. and PPG Industries, Inc. in particular support the amendment of the countervailing duty law by the redefinition of "subsidy," as provided in the amendments to H.R.3. Both of these companies have been exposed to foreign competition that has benefitted from subsidized natural resource inputs, which have not been properly neutralized by countervailing duties. This is due to the use by the Commerce Department of the general availability or "specificity" test, under which it will not treat a program as constituting a subsidy if it is "generally available." PPG, Cabot, Roses, and Bethlehem have all been involved in cases in which programs that were clearly subsidies were not countervailed because they were found to be "generally available," and support the prohibition of the test. The anomalies of this test for countervailability are patent. It actually encourages foreign governments to subsidize widely, because the more widely a subsidy is used, the less likely the department is to countervail it. It has led to absurd results, as when the extension of a program to more than one company made a program "generally available," and thus not countervailable. Nothing could do more to strengthen the countervailing duty law than to prohibit the Commerce Department from using the general availability/specificity test. The redefinition of "subsidy" under H.R.3 would effectively end the department's ability to use the general availability test. S.891 would explicitly forbid the Commerce Department from using this test. S.891 at § 106.

Cabot and PPG would draw to the Committee's attention to section 208(d) of S.636, and to a proposed amendment to H.R.3. These provisions would grant an injury test to duty-free products covered by countervailing duty orders under section 303 of the Tariff Act of 1930, 19 U.S.C. 1303(a), if the country exporting the product becomes a signatory to the GATT, or undertakes equivalent obligations. The Commerce Department has stated that, unless this provision is adopted, such countervailing duty orders must be revoked, as they contravene our international obligations. The Department has failed to explain that there is compelling evidence that, to the contrary, such orders would remain in force, that the international obligations of the United States allow the continued existence of such orders, and that the later adherents to GATT, the GATT Subsidies Code, or equivalent obligations were never intended to receive the benefit of an injury test for countervailing duty orders imposed before they acceded to such agreements. Application of the provisions of the GATT itself is prospective. More importantly, the terms by which a nation accedes to GATT are negotiated. In the past, these negotiations have not included provision for the application of an injury test to standing countervailing duty orders. For this reason, the law should be amended so that the creation of new international obligations can only affect future orders, and has no application to orders existing at the time the international obligation comes into force and effect.

2. Changes to the Antidumping Law

Smith Corona, Timken, Bethlehem, and Roses Inc. have had a good deal of experience in the administration of the antidumping law. These bills contain a number of helpful provisions in this area, especially as concerns diversionary and downstream dumping. They lack two other provisions, however, that if added would greatly strengthen the antidumping law. These are a prohibition of the so-called "ESP offset" and the mandatory deduction of profit from United States price in certain cases. The ESP offset is a deduction created by the Commerce Department that has the effect of reducing foreign market value, and so dumping margins. The offset contradicts the pertinent provisions of the statute, and has the sole result of artificially decreasing dumping margins. Therefore, use of the ESP offset by the ITA should be forbidden. S.891 would make this change. S.891 at § 101(a).

On the other hand, in the case of imports through related parties, the ITA does not make a deduction that should be made. In such "exporter's sales price" situations, the law directs the agency to determine what the price would have been in the United States, had the foreign producer sold the article directly to an unrelated buyer, rather than through a related party, so that the foreign producer cannot escape the imposition of dumping duties by selling the product to its related party importer at an inflated price. To this end, the ITA is directed to deduct all costs associated with the related party importer, such as commissions, advertising expenses, etc. Clearly, one source of increase in the price between the producer and the ultimate buyer would be the related party importer's profit. Our major trading partners, including the European Community, Canada, and Australia, all provide for the deduction of such profit from exporter's sales price, and the GATT Antidumping Code specifically allows this deduction. Given the damage dumping does to United States industry, there is no reason why the antidumping law should not be strengthened in a manner that is clearly permissible under our international obligations by providing for the statutory deduction of profit. S.891, § 101(b), would make this change.

Timken and Bethlehem oppose an amendment to H.R.3 that would weaken both the countervailing duty and antidumping laws by exempting from the requirement that imports be cumulated for purposes of determining injury imports that are "insignificant." This provision unnecessarily deprives domestic produc s of the protection of the law, and would in effect provide relatively low-volume exporters a license to dump or subsidize.

3. Gray Market Imports

Another type of unfair trade involves "gray market" imports. These are imports using trademarks, patents, copyrights, or trade dress that are owned by the foreign producer, but which are are licensed or held exclusively by a United States company for sale in the United States. Such imports are allowed into the United States under a regulation of the Customs Service that permits such imports if the foreign producer and the United States company are related. As the legitimate U.S. trademark holder is bearing the expense of warranties, advertising, dealer support etc., the "parallel" or "gray market" importer, free-riding on the good-will established by the legitimate importer, is often able to charge lower prices. Yet because of the Customs Service's interpretation of the law, the United States company is not able to stop these imports.

It is estimated that gray market imports cost American companies $8 billion in sales per year, yet none of the bills being considered by the Committee address this problem. Continuing to allow such imports in violation of the statute will erode the long-term ability of legitimate importers to offer needed customer support and increases the opportunity for the importation of counterfeit goods. The relevant statute, 19 U.S.C. 1526, should be amended to prohibit the import of any article embodying a registered patent, copyright, trademark, or trade dress without the permission of the United States owner of such intellectual property, whether or not the United States company and the foreign producer are related.

4. Amendment to Section 337

Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, forbids unfair competitive practices, such as patent or copyright infringement or predatory pricing, on the part of imports. Under section 337, however, imports that benefit from such unfair practices may be excluded only if it is shown that they have injured the domestic industry. This is an illogical and unnecessary restraint on the ability of domestic industries to gain relief from practices that would, if committed by American firms, be clearly illegal. All three of the bills, as well as S.891, § 110, would eliminate the injury test under section 337 for imports that infringe upon valid United States patents, trademarks, copyrights, or trade dress. PPG strongly supports this provision.

C. Protection of United States Rights under International Trade Agreements

Unfair trade practices by foreign countries do not just harm American industries in the domestic market. These practices also deny American industries sales in other markets of the world. Under section 301 of the Trade Act of 1930, 19 U.S.C. 2411, the President may take such action as he deems appropriate if he determines that acts, practices, or policies of a foreign government deny the United States the benefits of a trade agreement or otherwise constitute an unreasonable burden on United States commerce. If a domestic industry believes that it has been harmed by unfair foreign trade practices, it can petition the U.S. Trade Representative to undertake an investigation. If the U.S.T.R. initiates such an investigation, and concludes that the conditions for retaliation are met, it will recommend action to the President. The President retains sole authority to act, however.

1. The Experience of Roses, Inc.

In theory, section 301 can be a powerful instrument of free trade. In practice, its use has been haphazard, inconsistent, and highly political. The first barrier a domestic industry faces lies in convincing the USTR to initiate an investigation. The experiences of Roses Inc. in this respect are sadly instructive. On August 5, 1985, Roses Inc. filed a comprehensive petition with the USTR, describing a wide range of unfair trade practices by the major rose exporting nations, including the EC and Colombia. The petition alleged that these practices limited exports by the United States of fresh cut roses, and increased exports to the United States, both directly and by diverting third country exports. The petition was filed only after Roses Inc. had consulted intensively with USTR, to ensure that the petition would provide all of the information needed. USTR, however, refused to initiate an investigation, citing a number of different reasons, none of them convincing. Before making its decision, the USTR met or had communications with representatives of exporters from Colombia, Guatemala, and the Netherlands, in which they presented information to the USTR allegedly refuting Roses Inc.'s claims. Roses Inc. sought but was unable to secure a meeting with the USTR to refute these allegations.

The Subcommittee on Trade of the House Ways and Means Committee noted its concern with the USTR's handling of the Roses 301 petition in H.R. Rep. No. 581, 99th Cong., 2d Sess. 38 (1986), and indicated its belief that USTR should reconsider the petition. USTR did so, and again refused to initiate. Congressman Leon Panetta (D. Cal.) informed the USTR that he believed that the USTR's decision was based upon an incorrect interpretation of the law, and reflected a failure to consider key facts. Rep. Panetta compared the cursory treatment of Roses Inc.'s 104-page petition, with 16 supporting exhibits, to the attention USTR gave the 12-page petition of the Semiconductor Industry Association. The willingness of the USTR to conduct *ex parte* meetings with foreign representatives, without allowing Roses Inc. to participate or even to reply to the information presented, and the difference in treatment given the roses and semiconductor petitions, leads to the inescapable conclusion that the ability of an industry to obtain relief under section 301 is largely a function of its political power, and not the justice of its claims. Having tried, unsuccessfully, to obtain relief against unfairly traded imports under section 301 and in countervailing duty and antidumping proceedings, Roses Inc. is now seeking legislative action to put it on an equal basis with foreign rose growers. The Rose Equity Bill, H.R.750, would place the U.S. tariff rate on roses at 24% in summer and 17% in winter -- exactly the same rates the EC imposes. This is a tariff equity measure, the only way the rose growers of the United States can compete on equal terms with their chief foreign competitors.

2. Suggestions for Amendment of Section 301

H.R.3 and S.490 seek to curb some of the abuses under section 301 by transferring the power to determine whether foreign country actions are unreasonable from the President to the USTR, and by requiring the President to act under some circumstances. The President would retain discretion as to how to act, however. These changes would certainly be helpful, but I do not believe that they go far enough to correct the fundamental weakness of the section 301 process now -- its political nature. Transfer of determination power from the President to an office of the President would simply shift the focus of political efforts to obtain (or deny) relief, without removing those influences. Similarly, requiring the President to act, but leaving him essentially unfettered discretion in the manner of action, leaves open the possibility that the President could fail to provide meaningful relief to a worthy industry on purely political grounds.

S.891 would remedy these problems. This bill would transfer determination authority to the International Trade Commission, an independent agency. If the ITC found that foreign practices had denied U.S. rights or burdened U.S. commerce, the ITC would prescribe retaliation. The President would be required to implement such retaliation unless and until the foreign country agreed to end the offending practice completely. Such a change in the law would ensure that deserving industries would be guaranteed relief under section 301. It would also strengthen the bargaining position of the United States, as foreign countries would know that, unless they agreed to end the practice, they would face certain retaliation.

Another safeguard for domestic petitioners under section 301 would be the provision of judicial review for refusal to initiate an investigation, whether by USTR, as under current law, or by the ITC. As was the case with Roses Inc.'s petition, the USTR is free to refuse to initiate an investigation, without having to justify his actions. Judicial review would ensure that petitions alleging the elements necessary for relief under section 301 would result in the initiation of an investigation. S.891 provides for such review.

Roses Inc. supports these efforts to reform the section 301 process.

D. Trade Negotiations and Import Relief

All three of the bills being considered would grant the President the authority to negotiate multilateral tariff concessions, and to proclaim those concessions as law. Each of the bills also contains some amendments to section 201 of the Trade Act of 1974, 19 U.S.C. 2411, the so-called "escape clause," which provides United States industries limited relief from import competition under some circumstances. Many of these provisions have merit, but no bill confronts the central problem of section 201. Similarly, none address the problem of disruption in the textile market, and the ability of domestic producers to obtain relief from such disruption. S.891 does so in a manner we support.

1. Tariff Concession Authority

The general decrease in tariffs worldwide has been a major factor in the explosion of international trade since World War II. It is certain that decreases in tariffs will bring about increased competition from foreign producers, so that some discomfort for United States industries is unavoidable. All too often in the past, however, tariff concessions have been made without reference to the degree of this "discomfort." Some industries are scarcely affected by lower tariffs at all, while others may be overwhelmed by foreign competition. Tariff concessions are intended to increase trade; they are not meant to cause serious, even fatal, injury to domestic industries, and even the GATT does not contemplate trade concessions that will have this affect.

At present, the President is required to consider the effect tariff concessions will have on individual industries, but there is no check on his decision-making. To ensure that concessions will not disproportionately harm individual industries, there needs to be some mechanism for reviewing the President's actions, and reversing those that would be unduly harmful. None of the three bills being considered here allows for such a mechanism. S.891 would correct this omission by providing that tariff concessions proclaimed by the President would become law unless both Houses of Congress pass a joint resolution of disapproval within 60 days. In this way, the President retains flexibility in negotiation, and Congress can ensure that no tariff concession will cause undue harm to any individual domestic industry.

2. Relief from Import Competition under the Escape Clause

It is inevitable that, as foreign trade increases, some industries will have great difficulty in adjusting. Under section 201 of the Trade Act of 1974, the President can provide temporary relief from import competition to an industry that has been seriously injured by such competition, to give it time to adjust. There has been widespread dissatisfaction with the manner in which section 201 has, or rather has not, been used. Over the past few years, the ITC has repeatedly found that a domestic industry had suffered serious injury and recommended relief, only to have the President refuse to take any action. In most cases, the reason given was that the provision of import relief would require the United States to make concessions regarding other products, and that such concessions would cause greater economic harm than the benefit import relief would provide.

This position is both legally inaccurate and logically inconsistent. The provision of import relief does not automatically require the United States to make equivalent trade concessions. Rather, GATT itself provides that compensation is required only if an exporting country can show that the import relief measures have affected it adversely. The legislative history of section 201 likewise makes it clear that compensation is not automatic, but requires a showing of adverse effect by the foreign country. Furthermore, this position is logically inconsistent with the President's request for broad authority to negotiate tariff concessions. On the one hand, across the board tariff concessions are supposed to cause no harm. On the other hand, selective tariff concessions by way of compensation are said to cause great harm. The contradiction inherent in these mutually exclusive positions is self-evident.

H.R.3 and S.490 contain a number of provisions that would make section 201 more effective. I would single out in particular the provisions regarding expedited relief for industries involving perishable products and the clarification of the factors the ITC shall consider in determining whether injury has occured, and what relief should be provided. None of the bills, however, address the greatest obstacle to the provision of relief under section 201, namely, the avowedly political nature of the President's final decision. H.R.3 would transfer the authority to determine whether and in what manner to implement trade relief from the President to the USTR. As is the case with the proposed transfer of determination authority under section 301, I believe this change would have no practical effect. What is necessary is to depoliticize the section 201 process completely. S.891 proposes a workable alternative. In brief, it would require the President to implement the relief found by the ITC to be necessary. This would ensure that no industry should bear a disproportionate part of the burden of tariff concessions that benefit the national economy as a whole. A finding by the ITC that import competition has seriously injured an industry indicates that the industry is carrying such a burden. Relief in these circumstances should be automatic, so that the future of an industry is not decided by political considerations or ideological commitment, rather than by the industry's ability to compete.

3. Implementation of Textile Agreements

Imports of textiles into the United States are governed by a network of multilateral and bilateral agreements, the aim of which are to avoid disruption of the market by individual producers. If a domestic textile producer believes that imports from a foreign country are disrupting the market, in violation of an agreement, it can petition the Committee for Implementation of Textile Agreements (CITA) for action. At present, there is no law requiring CITA to provide relief, or even to consider a petition. S.891 would create a procedure, and would require CITA to act under specified circumstances. The bill would also create a mechanism for enforcing CITA's determinations to limit disruptive imports. Enactment of this bill would be of tremendous help to American textile producers in their efforts to compete against foreign imports.

E. Export Controls

The difficulties United States firms face in competing do not end with unfair import practices or unwise tariff concessions. Companies that wish to export their products, especially companies in high-technology fields, are often prevented from doing so by our own government. We are all aware of the study by the National Science Foundation, which concluded that our present system of export controls actually undermines the national security of the United States by costing us billions of dollars worth of exports each year, while having almost no effect on the ability of foreign countries to obtain technologies we would keep from them. H.R.3 seeks to revise and streamline these controls, so that the only exports to be restricted would be those of products or technology which are not in fact available elsewhere, and which truly are vital to the security of the United States. S.891 contains a still more comprehensive revision of the law. It would simplify and expedite the licensing process, and make it easier for businessmen to determine in advance whether and when they are likely to receive an export license. Reform of the export control laws is absolutely vital if American industry is to compete effectively in the markets of the world.

F. Incentives to Research and Development

The changes in the trade laws I have described above will do a great deal to enable American businesses to compete internationally. Beyond this, however, industry must have the ability to invest in new technologies and facilities. In an increasingly competitive world, the successful company must stay at the leading edge of technology. This requires investment in research and development. Although they contain a number of provisions that address this matter indirectly, such as through the funding of education in science and mathematics and modernization of university research facilities, none of the bills would provide a means of encouraging spending on research and development directly. S.891 would do so through a revision and increase in the tax credit available for expenditures for research and development. Under this bill, a credit of up to 18% would be available. This is a powerful incentive. The bill targets small business for an additional credit, so that the small companies and the individuals that give rise to many of our best ideas will be able to put those ideas into practice. S.907, the Technology Competitiveness Act of 1987, would provide still more assistance in the efforts of American industry to modernize.

G. Structural Change of the United States Economy

Revision of the trade laws can certainly aid American business, but in the end, the competitiveness of United States industry is a function of the economic health of the nation as a whole. At present, two developments greatly impede the ability of the economy to finance the innovation United States businesses need to remain competitive. These developments are the allocation of tremendous amounts of funds to finance mergers and acquisitions, and the enormous budget deficit.

1. Mergers and Acquisitions

We are only now becoming fully aware of the economic consequences of the expenditure of vast funds to finance mergers and takeovers. Massive amounts of capital are taken up by highly leveraged transactions that create no new products or jobs, while businesses that need new capital for productive investment are denied it. There are a number of bills currently before the Senate and House that address this issue. I mention it now to stress the degree to which the future competitiveness of the United States in the world economy is dependent upon our ability to make the best and most productive use of our resources now.

2. Reduction of the Budget Deficit

We are all aware of the strongly negative effect the budget deficit has had and will have upon our national economy. It is apparent that increases in income taxes are not practical at this time. It is necessary therefore to increase government revenues. Two ways in which this can be done are through the imposition of a form of value-added tax, and a change in the basis on which customs duties are calculated. It is estimated that a 10% VAT would raise an additional $170 billion per year. Currently, customs duties are levied on the FAS value of a product, which is basically its price before export. A shift to C.I.F. value, which includes the cost of freight and insurance, would raise an additional $2 billion per year. As most developed countries use C.I.F. value as customs value, the United States would simply be conforming its practice to that of its trading partners.

Both the VAT and the change in basis for customs valuation are contained in S.891. All revenues raised from these measures should be used solely to eliminate the budget deficit, as that bill provides.

H. Conclusion

The United States can compete effectively in international trade, if it acts aggressively against unfair trade practices, if domestic industries have the chance to adjust to import competition, if American industry can export its products without unnecessary restrictions, if business is encouraged to invest in research and development, and if we act now to bring the budget deficit under control and to make certain that scarce capital is used for truly productive uses. There is an unfortunate tendency in some quarters to describe any governmental action in the area of trade as "protectionist." None of the suggestions I have made today should be described as protectionist in any way. Many of them involve nothing other than bringing United States law into conformity with that of our major trading partners. Others represent a careful consideration of the minimum that is necessary to make it possible for American business to compete, while interfering in the free operation of the market as little as possible. Taken together, I believe these measures will enable the United States to retain its position as the most productive and competitive country in the world.

T·M·A
TOY MANUFACTURERS OF AMERICA

April 15, 1987

Dear Mr. Wilkins:

This statement is submitted by the Toy Manufacturers of America, Inc. (TMA) in response to the Finance Committee press release of March 20, 1987 and presents TMA's views on certain proposals before the committee as it considers comprehensive trade legislation.

TMA was founded in 1916, and today continues to represent the American toy industry, Its 250 members are responsible for 90 percent of the some $12 billion in annual toy sales in the U.S. In addition, they have a significant interest in toy sales around the world. As manufacturers, importers, and exporters, TMA members are strongly committed to the maintenance of an open international trading system which permits its member companies to take maximum advantage of world-wide efficiencies, thus holding down the costs of toys which must compete with many other products for the discretionary portion of the consumer's budget.

At the outset, it is important to make clear TMA's view that no amount of tinkering with U.S. trade laws is likely to have a significant effect on the U.S. trade deficit. While foreign unfair trade practices and restricted market access for American exports have certainly adversely affected particular companies and sectors, they have been only a minor contributor to the deterioration of the U.S. trade position. The root of the problem lies elsewhere, with misaligned exchange rates, U.S. fiscal policies, inadequate growth in productivity, world-wide structural shifts in basic industries and agriculture, and so forth. U.S. comparative advantage cannot be restored by the kinds of provisions you now have before you. That can best be accomplished by the creation of a stable, macroeconomic environment, both at home and abroad, which encourages investment, growth, and efficiency. We therefore do not support passage of the various proposals to ease the burden on special interests seeking to have import restrictions imposed under the various trade remedy laws.

Because of these views, TMA fully supports legislation which will empower the President to negotiate and implement trade agreements in the course of the Uruguay Round. That authority should be similar to that which was granted by the Trade Act of 1974, which provided for full congressional participation in and oversight of the negotiating process, with an opportunity to discuss implementing legislation before its submission under fast-track procedures. Tariff authority should be for a reasonable period of time to avoid disruption of negotiations, which realistically should last for 6 to 8 years. Fast-track authority to negotiate agreements for the reduction or elimination of non-tariff barriers should be permanent. Such authority should not be conditional, beyond the provisions presently in Section 101 and 102 of the 1974 Act. The objectives of the negotiations, as set forth by Congress in the authorizing legislation, should be to strengthen an open, non-discriminatory, multilateral trading system, and the institutions of that system, such as the GATT and the IMF, and to discourage the use of unilateral trade measures, barriers, or subsidies as a means of addressing international trade and monetary problems. While we favor the broader grant of authority contained in S.636, we believe the improvements made during House markup of H.R. 3 are sufficient to warrant our support of that provision as well.

These comments do not address all of the various specific proposals to revise the trade remedy laws. We do wish to reiterate TMA's view that such legislation will have little, if any, effect on the problems afflicting U.S. industry and agriculture. Thee have been three major modifications of these laws in the past dozen years -- the last barely two years ago -- without any discernable improvement in the U.S. trade position. In fact, it can be argued that the mistaken emphasis on imports in general, and the alleged unfair trade practices of our trading partners in particular, as the cause of the decline of certain U.S. industries has distracted the Congress and executive branch from addressing the real structural and fiscal causes of their decline.

The continuation of these misdirected efforts is apparent in one of the specific provisions of H.R. 3, upon which we would like to comment, the so-called Scofflaw Provision contained in Section 175. This provision would prohibit any person from importing for a 3 year period if during any 7 year period such person was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving gross negligence, fraud, or criminal culpability. We note that the revised version of H.R. 3 which will be considered by the House eliminates negligence as one of the acts which can trigger sanctions under this provision. This is an improvement, but Section 175 remains a bad idea. Orders issued under this provision with respect to "multiple customs law offenders" which are firms, corporations, or other legal entities apply to all officers and principals of the entity, as well as to any employee or agent of the entity who was directly involved in the violation concerned. Not only is the "person" prohibited from importing, but the "person" is prohibited from engaging "any other person for the purpose of introducing on behalf of the multiple customs law offender, foreign goods" into the United States.

TMA's opposition to Section 175 is premised on the following flaws which we perceive in this proposed legislation:

> This is a criminal statute, yet the provision is vague and imprecise in a number of respects, including (1) the definition of "convicted", and "finally determined", which have no certain meaning in the administrative penalty proceedings of the Customs service; and (2) the circumstances under which the "offender" is prohibited from purchasing products imported by others;
>
> the exposure to criminal liability of corporations, their officers and principals as the result of a series of non-criminal actions, determined by an administrative agency under procedures offering minimal "due process" safeguards to the accused;
>
> the apparent treatment of each entry which contravenes customs law in the manner described as a separate "violation", no matter how many entries the importer may make in a seven year period, or how large the corporation may be, and how many employees may be involved as import activities;
>
> The inclusion of insignificant, technical, civil violations, and the failure to distinguish them from those resulting in substantial revenue losses or other injuries to the U.S. economy;
>
> The failure to define civil fraud in the proposed legislation despite recent efforts by the Customs Service to administratively remove the requirement of a showing of intent.

In summary, TMA believes that this provision is inherently inequitable and unjust, that it constitutes a denial of due process, and that it ignores the inevitability of human error in dealing with complex and often imprecise administrative procedures. Large corporations, such as many of TMA's members, whose employees process thousands of entries every year would be particularly vulnerable. They would be subject to the same threshold of collective and cumulative guilt as an importer who has one employee and makes then entries in a year. As a result, volume importers would be forced to contest every administrative penalty proceeding in the courts to avoid the crushing sanctions flowing from any "final determiniation" of civil fraud, especially as Customs is seeking to define that offense. The possibility that non-criminal actions by uninformed or distracted low-level employees could result in a company being cut off from its overseas suppliers of hundreds of products, many of which are not even available domestically at any price, at an incalculable cost to the company's stockholders, employees, and to the consuming public graphically illustrates the absurdity of this provision.

The existing criminal and civil laws are more than adequate to deal with true criminal activity and civil misfeasance and malfeasance. This proposal is nothing but very thinly disguised in terrorem harassment of the importing community and ought to be rejected. Certainly there can be no question of such a provision advancing the stated objective of H.R. 3, which is to enhance the competitiveness of American industry. Such legal protectionism can only have the opposite effect, by helping to convince domestic producers that they do not need to maintain and improve their competitiveness because trade barriers such as this one will insulate them from foreign competition.

Again we urge that the Senate not consider ill-conceived and counter-productive trade legislation, just so it can be perceived to be doing something to address the complex causes of our deteriorated trade and current account balances.

Finally, we wish to express support for the extension of the duty suspension provisions for stuffed dolls and certain stuffed toy figures of inanimate objects, and the new duty suspension for certain stuffed toy figures of animate objects. These non-controversial bills, which are of critical importance to the American toy industry have been included in Section 845 and 859 of H.R. 3. There are no domestic sources for these products. TMA urges their immediate passage as a boon to American consumers, and to end the uncertainty in the industry which has existed since the expiration of the previous suspension for stuffed dolls and inanimate objects at the end of 1985.

TMA appreciates the opportunity of making its views known to the Committee on these most important issues. We would be pleased to answer any questions the Committee or the staff may have concerning TMA's position on this legislation.

Respectfully submitted,

By Douglas Thomson
Douglas Thomson, President
Toy Manufacturers of America, Inc.

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U.S. COUNCIL FOR INTERNATIONAL BUSINESS

RECOMMENDATIONS TO THE SENATE ON NEW TRADE LEGISLATION

The United States Council for International Business represents American business in the major international economic institutions. Its primary objective is to promote an open system of world trade, finance, and investment. Through its affiliation with the Business and Industry Advisory Committee to the Organization for Economic Cooperation and Development, the International Organisation of Employers, and the International Chamber of Commerce, the Council officially participates in the work of the OECD, the International Labor Organization, and the United Nations system, including related international agencies. The U.S. Council, through its affiliation with the ICC, consults with the GATT organization as well as with the Ambassadors representing the Contracting Parties.

Summary and Recommendations

The United States Council for International Business supports enactment of legislation that will equip the President with new authorities to negotiate strengthened international trade rules and disciplines over unfair practices; extension of such rules to areas not now covered by the GATT; and the opening of new market opportunities for U.S. exports. The new Trade Bill should:

- Provide broad flexible authority, with fast-track procedures, for multilateral trade negotiations that would improve GATT discipline through a GATT safeguards code, dispute settlement mechanism and strengthened GATT Secretariat; remove barriers stemming from a variety of national policies and practices; liberalize trade by exchanging concessions that would provide opportunities for U.S. exports; extend GATT rules to new areas such as services, intellectual property and investment; as well as establishing GATT discipline over agriculture.
- Require the Administration to continue with efforts to improve the functioning of the international monetary system.
- Amend U.S. trade and other laws to achieve enhanced protection of intellectual property rights (including U.S. adherence to the Berne Convention).
- Add certain authorities to the President's choice of policies to deal with unfair trade practices.

In the process of legislating the above authorities, Congress should refrain from seeking:

- Legislation that would put the U.S. in violation of its international obligations.
- The bilateral balancing of trade or current accounts, which would undermine the entire multilateral economic system.
- Establishment of workers' rights as a criterion for action under Section 301.

-- To impose mandatory retaliation or arbitrarily rigid time limits or procedures that preclude the use of remedies by negotiations in trade cases.

-- To transfer authority from the President, who must retain the responsibility for taking trade decisions that would restrict U.S. imports in light of his view of the national interest. Except where presently provided in the countervailing duty or anti-dumping laws, that responsibility should remain a discretionary decision of the President/

-- To require "industrial policy" approaches to the process of deciding upon relief from fair import competition.

Comments on Provisions of HR-3 and S-490

As the United States embarks on the first phase of what promises to be the most comprehensive, and potentially most important, round of multilateral trade negotiations in the last half century, it is critical that new U.S. legislation reinforce, and especially that it not undermine, the credibility and effectiveness of the U.S. negotiators. Without effective U.S. leadership, the negotiations have no chance of achieving our objectives. Thus, first and foremost, the U.S. Council urges that the bill avoid making any changes in U.S. law that would put the U.S. in violation of existing international rules or obligations. In our view, where Congress believes an international rule does not adequately protect or promote U.S. interests, it should authorize the President to negotiate new rules and should refrain from legislating unilateral changes in them.

Mandatory Aspects of Section 301

Section 301 can be a very useful authority to permit U.S. action in certain cases if negotations are unsuccessful in eliminating "unwarranted, unreasonable or unjustifiable" practices in other countries. However, the U.S. Council opposes the provisions of S-490 as currently drafted concerning countries which engage in a vaguely defined pattern of "adversarial trade." The requirements for action within specific time frames risk placing the U.S. in violation of international rules and processes. They also risk compromising the chances for the success of negotiations to strengthen the GATT dispute settlement process, which S-490 correctly identifies as one of the "principal objectives" to be sought in the Uruguay Round. To the extent the Executive's flexibility under Section 301 is reduced, it will either be reluctant to use it, or be constrained to invoke the waiver authorities, in either case undermining the effectiveness of Section 301 as an instrument of U.S. trade policy.

The Council is concerned about legislating mandatory retaliation for alleged trade agreement violations in the absence of international "due process" determining that an agreement or rule has been violated. HR-3 recognizes that mandatory action will not be required if the GATT contracting parties or a GATT panel determines that U.S. rights have not been denied. The final legislation should allow sufficient time to permit a GATT panel to complete its work and the offending country to implement the decision before the President is required to act. This important recognition of international due process should be maintained in the final legislation lest the Executive be forced to take action that would undermine the current system.

We are greatly concerned about the requirements, both in the bill as reported by the House Ways and Means Committee and, even more undesirable, in the amendment proposed by Congressman Gephardt, linking action on unfair trade to countries' running "excessive" bilateral trade surpluses with the United States. The basic concept of seeking bilateral balance is trade restrictive and runs counter to generally accepted norms for an open nondiscriminatory multilateral system. Congressman Gephardt's concept of mandating an arbitrary reduction in these surpluses would plunge the world into trading anarchy. The provision of the Ways and Means bill as they stand also incorporate the concept of "excessive surplus" as justification for imposing impossibly short deadlines and mandating action against all of a country's unfair trade policies with tougher waiver conditions. Such a process would risk distorting U.S. negotiating priorities and placing the U.S. in violation of the international rules and in conflict with our major trading partners.

Workers' Rights

The U.S. Council opposes the inclusion of workers' rights in the definition of "unreasonable" foreign practices, as is done in HR-3. No other country has accepted this concept and repeated international discussions of the subject have failed to achieve any consensus that workers' rights are a cause for trade actions.

A workers' rights criterion is presently applied under the Generalized System of Preferences (GSP) by the U.S. Trade Representative. It should be stressed that GSP is a purely voluntary system of concessions; it is not at all contractual or dependent in any way on other countries' agreement. Thus, it is not a precedent for amending Section 301. It should also be stressed that whenever workers' rights are raised the question of ILO Conventions as the applicable international norm inevitably arises. Even though the U.S. itself clearly adheres to the central principles of these conventions, U.S. labor law varies in several significant ways from detailed ILO standards. For this reason, the United States has not ratified ILO Conventions 87 and 98 concerning freedom of association, the right to organize and collective bargaining. If the current provision on workers' rights were enacted, the United States could find itself faced with a choice of either applying the terms of ILO conventions that it has not itself ratified and which differ in important aspects from current U.S. labor law, or of applying purely U.S. standards that have no international standing. The more general and vague criteria in the GSP legislation would not be appropriate to the quasi-judicial proceedings under Section 301.

Transferral of Presidential Authority

The U.S. Council agrees with S-490 that the President, not the USTR, must retain the responsibility for making decisions to retaliate under Section 301 or restrict imports under Section 201. These decisions involve broad political and economic consequences important for the nation as a whole and should be taken by the President and not an appointed official.

Antidumping and Countervailing Duty

Consistent with our view expressed earlier, we believe it is bad policy and poor negotiating strategy to put the U.S. in a position of violation of current international trade rules, embodied in the GATT and relevant Codes, before making a good faith effort to negotiate changes in such rules. Thus, while we favor negotiations concerning new international rules to deal with discriminatory pricing of national resource inputs, export targeting and diversionary dumping, we recommend against legislating changes in U.S. law to deal with such issues pending consideration of the results of negotiations in the Uruguay Round on amending the Codes. None of these practices is so damaging as to justify unilateral action at this time, but the chances of working out satisfactory new rules may be severely diminished if we were to do so.

In addition, some of the provisions risk stimulating enactment of "mirror legislation" by our trading partners which could damage U.S. exports. This might be the case if the natural resource subsidy or diversionary dumping provisions were enacted and would certainly apply to the proposal to amend the 1916 Anti-dumping Act to create a presumption of intent to injure against multiple offenders, or other legislative proposals designed to create a new private right of action against dumping. The only action against dumping authorized by the GATT Code is the levying of duties to compensate for the margin of dumping. Any additional penalty would be a clear violation of the Code, and amendment to the 1916 Act of the kind proposed would forfeit the protection that Act currently has under the GATT's "grandfathering" clause.

Finally, all the proposals carry an unacceptable level of risk for American exporters. "Dumping" is, itself, a nebulous and subjective concept, difficult to distinguish in practice from commonly-used commercial practices of differential and discount pricing in different markets as an entirely reasonable way to gain market access or expand market share. As a result, there are often more antidumping orders out against American exporters than any other country's exporters. If the new trade bill were to blur the distinction between legitimate practices and unfair competition, it would be perceived as transforming our antidumping law into a protectionist instrument. Foreign countries would argue that they were justified in applying equivalent criteria against our exports to their markets with potentially devastating consequences for our exporters as they begin to regain positions in foreign markets out of which our high value dollar squeezed them in the early 80s. As a nation seeking to recreate a competitive edge, we can simply not afford actions that encourage such practices.

Section 201

The U.S. Council opposes changes in Section 201 that would make access to import relief either guaranteed (e.g., in the event of a unanimous ITC recommendation) or encumbered by an elaborate tripartite industry-labor-government "industrial policy" mechanism. The latter would involve government in areas of decisionmaking that are properly those of management and risk promoting collusion and anticompetitive practices. The purpose of this section should be to assure that relief will be granted only when necessary to facilitate adjustment for business to become competitive or phase out. This should be done at the smallest possible cost to other sectors of the economy and to the maintenance of competition.

Trade Adjustment Assistance

On a related issue, the U.S. Council has endorsed the need for an integrated, comprehensive approach to enhancing the competitiveness of the U.S. economy. As an element of that approach, we favor a program (such as the Administration has proposed for workers displaced from employment for whatever reason) which will emphasize retraining and relocation assistance and encourage the portability of pensions. Specifically, we have recommended that the relevant featuresof existing legislation be consolidated under a single program for displaced workers. The Council is thus opposed to proposed Section 215-217 of S-490 concerning a trust fund to pay for adjustment assistance, to be funded by auctioned quotas and import surcharges, for two reasons:

-- the auction/surcharge proposals would probably violate our GATT obligations or at least expose us to compensation requirements or retaliation;

-- since we favor a program of assistance for workers displaced regardless of cause, it should be funded from general revenues rather than from import fees.

Intellectual Property Rights

The Council supports the provision in S-490 eliminating the requirement to prove injury in intellectual property cases. By eliminating the requirement to prove injury besides patent, trademark or copyright infringement, the bill would make Section 337 a more effective remedy for U.S. manufacturers. We support eliminating the requirement that the ITC must find the U.S. industry to be "efficiently and economically operated." Newly established, technologically-based industries may have trouble proving efficiency. "Industry" should be defined to include investments in exploitation of intellectual property; and a 90-day deadline should be established as the rule in most cases for the ITC to decide on temporary exclusion orders. We also support adding provisions on process patents that would render it unlawful to import into, or sell within, the United States a product that is made by a patented process.

Negotiating Authority

As the foregoing comments show, the Council puts considerable emphasis on the need for a new round of negotiations and for vigorous U.S. leadership to achieve meaningful results. While we are pleased that S-490 accords an important place to negotiating authority, we are concerned that the procedure proposed for granting access to the fast-track voting process is unnecessarily cumbersome and could delay the start of serious negotiations.

The Council favors renewal of existing authority for use of the Section 151 procedures for a 10-year period. While we believe Congress should outline U.S. negotiating objectives in general terms, it should not try to define specific outcomes in legislation that could tie the hands of U.S. negotiators. Having set the goals, Congress should insist on effective procedures for close and continuing consultation with the negotiators with the guidance they need. The procedure in S-490 puts excessive emphasis on the review of overall trade policy (whether related to the negotiations or not). To give the U.S. negotiator the credibility he needs with other countries, he should have the assurance of access to the fast-track process as early in the negotiations as possible. However, requiring a major debate over the policy statement, coming, as it would, in the midst of the negotiations, risks undermining the bargaining strength of the U.S. negotiator by forcing his hand prematurely. The purpose of the negotiating authority section should be to strengthen the credibility of our negotiator, not to force him to negotiate simultaneously both at home and abroad in a potentially damaging or confrontational process.

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STATEMENT OF

U S WEST, INC.

Telecommunications Trade: Ramifications for the Domestic Telecommunications Equipment and Services Markets and for U.S. International Competitiveness

The trade debate has addressed unfair foreign trade practices affecting telecommunications equipment. Proposals have been offered in both the House and the Senate over the past few years to achieve an open world trade system for telecommunications products and services. The focus of the debate has been on opening foreign markets to U.S. equipment manufacturers and suppliers of telecommunications services. However, if those markets are not opened and proposed sanctions are enforced, unfortunate and unintended ramifications will result.

Competition in the network equipment portion of the telecommunications market will be substantially reduced, resulting in higher prices of network equipment and thus higher prices of domestic telecommunications services for consumers and businesses, particularly small and mid-size businesses that depend on public networks for their telecommunications services more than large businesses do. The technological base of the public telecommunications networks will be weakened because, without the competitive threat of alternative sources of supply, protected domestic network equipment suppliers will be able to hold back the speed of introduction of new technology in order to enhance the profits of affiliated telecommunications service providers. Because telecommunications is a key infrastructure industry, higher prices and less advanced technology in the public telecommunications networks will result in a less productive and less competitive American economy.

U S WEST's three major subsidiaries, Mountain Bell, Northwestern Bell, and Pacific Northwest Bell Telephone Companies, serve 40 percent of the contiguous United States and expend approximately $1.7 billion on telecommunications network plant and equipment each year. The vast majority of equipment they purchase is from manufacturers with production facilities located in the United States. However, access to an international telecommunications equipment market is critical to these telephone companies' continued provision of low-cost and innovative services through state-of-the-art technology since there are only two or three major manufacturers of computer switching equipment in the United States.

- Competition from international suppliers helps to keep the domestic suppliers' prices lower.

- The U S WEST telephone companies provide telephone service in some rural and sparsely populated areas. Providing service in these areas requires a different scale of equipment than used in more urban markets. Without the spur of foreign competition, manufacturers will respond to the requirements of the upper end of the national market to the detriment of service to rural areas.

- o Providers of local and long distance communications services are becoming increasingly competitive among themselves. If manufacturers who are integrated with long distance companies are protected from foreign competition, they will have the capability of controlling the introduction of technology to their competitive advantage.

- o Certain products -- PBXs and telephones -- are increasingly available only from foreign sources (whether foreign or domestically owned). Voice data storage, forwarding, and other "information services" are provided through these types of equipment. Restricting sources of supply will raise prices for consumers and limit their access to these innovative services.

The line-of-business restrictions imposed on the Bell Operating Companies by the Modification of Final Judgement in the AT&T divestiture specifically prohibit U S WEST from providing information services and from manufacturing telecommunications equipment domestically. Domestic telecommunications policies that prohibit U S WEST from participating in the telecommunications equipment market and information services must be changed. Half of the productive capacity of the telecommunications industry within the United States is prohibited from participating in these critical markets. The Department of Justice has recommended that the line-of-business restrictions affecting manufacturing and information services be lifted, and those recommendations are before the Court.

U.S. trade policy should not place additional restrictions on the Bell Operating Companies and thereby further distort efficiency and competition in domestic telecommunications markets. Local telephone companies in particular will be unfairly burdened by uncertainty and reduced efficiency if one set of trade sanctions apply to all domestic industries -- implemented by the United States Trade Representative and/or the President, for example -- and the Federal Communications Commission imposes overlapping sanctions or rules on telecommunications trade.

The national economic interest would also be disserved if restrictions on joint ventures or other activities were applied differentially among industries and among firms. Restricting joint ventures of U.S. firms for policy purposes is an issue that requires full and careful debate. Debate to date on potential joint venture restrictions in the context of trade policy has focused on telecommunications. Proposals that have been discussed would restrict the joint venture or plant location activities of only a part of the key telecommunications infrastructure industry -- the Bell Operating Companies.

If joint ventures of U.S. firms with foreign trade partners are to be limited, the affected industries must be very carefully selected. Joint venture restrictions must apply to the smallest possible number of industries because joint venture restrictions could limit opportunities to learn other countries' technology, or to develop as-yet-unforeseen technologies and industries of the future. Any joint venture restrictions must be flexible, particularly in the case of industries, such as telecommunications, that are characterized by advanced, rapidly changing technology.

If enacted, joint venture or other restrictions, such as on plant location, must apply in a uniform manner to all U.S. firms within an affected industry. Basic competitive conditions in domestic markets -- both among firms in an industry, and among industries -- will otherwise be distorted. Principles of fundamental fairness of treatment of U.S. firms, particularly firms in the same industry, will otherwise be violated.

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